In Case 238/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole [Social Security and Agricultural Social Insurance Mutual Benefit Appeals Board], Paris, for a preliminary ruling in the proceedings pending before that court between

CAISSE D'ALLOCATIONS FAMILIALES DE LA RÉGION PARISIENNE [Family Allowances Fund for the Paris Region]

and

MR AND MRS RICHARD MEADE

for a preliminary ruling on the interpretation of Article 48 of the EEC Treaty and the provisions of Community law on the grant of family allowances,

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, U. Everling and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. Article L 524 of the French Social Security Code provides that the family allowances to which a French or foreign national residing in France is entitled in that country in respect of dependent children "are payable as from the second dependent child residing in France".

The provisions adopted for the implementation of that article provide that, subject to compliance with certain specific and unequivocal conditions, a child who is studying abroad is deemed

to be resident in France with the result that entitlement to family allowances is retained.

2. Richard Meade, a United States national, his wife, a United Kingdom national, and their two children, both United Kingdom nationals, have been resident since 1973 in France where Mr Meade is self-employed. The Caisse d'Allocations Familiales de la Région Parisienne [Family Allowances Fund for de Paris Region, hereinafter referred to as "the Fund"] paid family allowances to the parents in respect of the two children.

In 1977 one of the children was sent to school in the United Kingdom. When the Fund learned of this in January 1980 it ceased payment of the family allowances and claimed repayment from Mr and Mrs Meade of the sum of FF 6 436.80 wrongly paid to them between March 1978 and January 1980 in respect of the two children, one of whom was pursuing his studies abroad.

3. Mr and Mrs Meade failed to repay the sum in question whereupon the Fund instituted proceedings against them before the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole de Paris. The Fund claimed that the family allowances had been unduly paid to Mr and Mrs Meade since their two children were not both resident in France and therefore the specific and unequivocal conditions for the retention of entitlement to family allowances in the event of studies being pursued abroad were not fulfilled.

Mr and Mrs Meade contended that the refusal to grant family allowances on the ground that a child was pursuing his studies in the United Kingdom obstructed the free movement of persons and was contrary to Article 48 of the EEC Treaty since the child was thus prevented from pursuing his studies or professional training in another Member State.

Taking the view that the solution of the dispute depended on the interpretation of Community law, the Commission de Première Instance du Contentieux de la Sécurité Sociale, Paris, by decision of 3 June 1983, stayed the proceedings and requested the Court of Justice to give a preliminary ruling under Article 177 of the EEC Treaty on the following question:

"Is the Caisse d'Allocations Familiales entitled, on the basis of Article 48 of the EEC Treaty, to demand repayment of the family allowances paid to the parents of a young man of British nationality on the ground that he is pursuing his studies in England and to suspend payment of the said allowances on the same ground?"

4. The decision making the reference was lodged at the Court Registry on 21 October 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Fund, represented by its Director General, Y. Lavallée, and by the Commission of the European Communities, represented by its Legal Adviser, J. Griesmar, assisted by F. Herbert of the Brussels Bar.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order of 14 March 1984, pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court decided to assign the case to the Third Chamber.

II — Written observations

1. *Observations of the Fund*

The Fund stated that before it adopted its decision it had determined that Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416 [1]) was not applicable. The pursuit of studies by a minor in a boarding school abroad could not be regarded as sufficient to determine his place of residence when his parents were resident in France and entitlement to social security benefits arose in favour of the father, an American citizen; the Fund had had no opportunity to consider whether such entitlement arose in favour of the mother, a United Kingdom citizen, who had declared, when the benefits were paid for the first time, that she was not actively employed in France.

The Fund was therefore obliged to apply the relevant French legislation, in particular the general conditions for the grant of benefits and the provisions concerning periods of residence abroad for learning foreign languages. In the light of those provisions, and in particular those of Articles L 511 and L 524 of the Social Security Code, Articles 2 and 6 of Décret [decree] No 46-2880 of 10 December 1946 and Article 3 of the Arrêté [order] of 4 December 1979, the Fund was compelled to refuse Mr and Mrs Meade's application.

2. *Observations of the Commission*

The Commission suggests first that the question submitted should be re-worded since its purpose is to ascertain the scope *ratione personae* and *ratione materiae* of Article 48 of the EEC Treaty in circumstances such as those of the present case.

The persons covered by the relevant provisions of Community law are determined by factors relating to the activity carried on by the persons concerned and to their nationality. Freedom of movement for persons is not restricted exclusively to the employed persons referred to in Article 48 of the Treaty. Freedom of establishment (Article 52 *et seq.)* and freedom to provide services (Article 59 *et seq.)* are principles complementing the principle of freedom of movement for workers. Freedom of movement for persons therefore encompasses all the activities which are directly or indirectly connected with economic life. The persons concerned must, however, in the absence of an express provision to the contrary, possess the status of Community nationals.

Although in the present case Mr Meade pursues an economic activity which, as an activity carried on by a self-employed person, falls within the scope of freedom of establishment in accordance with Article 52 *et seq.*, he cannot rely on such freedom of movement since he is a United States citizen. His son, whose stay in the United Kingdom is the cause of the dispute, satisfies the condition as to nationality but does not carry on any economic activity enabling him to benefit from freedom of movement for persons since a student may not be regarded as a worker within the meaning of the EEC

1 — Codified version: Official Journal 1980, C 138, p. 1

Treaty. Accordingly, the case would fall within the scope *ratione personae* of the relevant provisions of Community law only if the family allowances were payable in favour of Mrs Meade who is a United Kingdom citizen.

As regards the scope *ratione materiae* of the relevant provisions of Community law, it is necessary to look beyond Article 48 and to consider the provisions of Regulation No 1408/71 which was adopted by the Council pursuant to Article 51 of the EEC Treaty and incorporates the measures needed to ensure that the exercise by workers of their freedom of movement does not adversely affect their social security rights.

It is quite clear from Article 73 (2) of Regulation No 1408/71 that Mr and Mrs Meade, on the assumption that they fall within the scope of that provision by virtue of Article 2 of the same regulation, are in any case entitled only to the benefits payable in the United Kingdom in respect of their child who is pursuing his studies there. Moreover, that provision confirms that entitlement to family allowances, which in social security matters is a corollary to freedom of movement, arises in favour of the worker and not of the child. The detailed rules for the application of Article 73 (2) of Regulation No 1408/71 which concern in particular the registration of members of the family who are resident in a Member State other than France with the competent institution of their place of residence are set out in Article 87 of Regulation (EEC) No 574/72 (Official Journal, English Special Edition 1972 (I), p. 159 [1]).

The Commission therefore suggests that the answer to the question submitted should be as follows:

1. The benefit of the provisions of Community law concerning freedom of movement for persons is restricted to Community nationals, without prejudice, however, to Article 2 of Regulation No 1408/71 which, in the field of social security, extends that benefit to stateless persons or refugees residing within the territory of one of the Member States.

2. Entitlement to family allowances and other social security benefits is governed by the provisions of Article 51 of the EEC Treaty and its implementing regulations. Article 73 (2) of Regulation No 1408/71 provides that a worker subject to French legislation is 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 whose territory those members of the family reside.

3. Article 48 of the EEC Treaty does not, in the case of a recipient of family allowances under the French social security scheme who is the father of two children and is himself a national of a non-member country, preclude revocation of the right to those family allowances following a transfer of residence by one of the children to the territory of another Member State.

III — Oral procedure

At the sitting on 5 April 1984, Richard Meade in person and the Commission of the European Communities, represented by Francis Herbert, presented oral argument.

Mr Meade stated in particular that family allowances were due to his wife. She

1 — Codified version: Official Journal 1980, C 138, p. 65

should be regarded as a worker and thus come within the field of application of the provisions of Community law because, on the one hand, she had worked as a secretary in his office and as manager of various companies, and, on the other hand, even a housewife contributes in any event to the economic life of a country. As a student, his son also came within the field of application of Article 48 of the Treaty because he contributed to the economic life of the country. The Fund was wrong to consider that his son no longer resided with his parents solely by virtue of the fact that he was studying in England. The French provisions were also discriminatory because they created an obstacle for young foreigners residing in France who wished to pursue their studies in their own language.

In conclusion, Mr Meade proposed that the Court should reply in the negative to the question raised.

The Advocate General delivered his opinion at the sitting on 30 May 1984.

Decision

1 By decision of 3 June 1983, which was received at the Court on 21 October 1983, the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole, Paris, referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty a question relating to the interpretation of Community law, and in particular of Article 48 of the EEC Treaty, in order to enable it to decide as to the payment of family allowances in respect of a child attending school in another Member State.

2 That question was raised in the context of proceedings between the Caisse d'Allocations Familiales de la Région Parisienne [Family Allowances Fund for the Paris Region, hereinafter referred to as "the Fund"] and Richard Meade, a United States national established in Paris, where he is self-employed, and his wife, a British national. The dispute concerns the withdrawal of family allowances in respect of the Meades' two sons, both British nationals, and the repayment of sums already paid.

3 Until 1980, the Meades received family allowances in respect of their two sons pursuant to the relevant French provisions under which such allowances are payable "as from the second dependent child residing in France". In 1980, the Fund learned that, since 1978, one of the Meades' two sons had

been attending school in England. Since the specific conditions under which the French provisions allow entitlement to family allowances to be retained in the case of a child studying abroad had not been complied with, the Fund suspended payment of those benefits and claimed repayment from the Meades of the allowances wrongly paid to them.

4 Mr and Mrs Meade, relying upon the principle of freedom of movement for persons and, in particular, on Article 48 of the EEC Treaty, appealed to the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole, Paris, which considered it necessary to refer the following question to the Court of Justice for a preliminary ruling:

"Is the Caisse d'Allocations Familiales entitled, on the basis of Article 48 of the EEC Treaty, to demand repayment of the family allowances paid to the parents of a young man of British nationality on the ground that he is pursuing his studies in England and to suspend payment of the said allowances on the same ground?"

5 That question seeks essentially to ascertain whether the provisions of Community law, and in particular Article 48 of the Treaty, prevent the withdrawal of family allowances on the ground that a child is attending school in another Member State.

6 Family allowances are one of the benefits governed by Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, which, at the time of the events referred to by the question from the national tribunal, had not been extended to self-employed persons by Council Regulation No 1390/81 of 12 May 1981. Since the purpose of Regulation No 1408/71 was to adopt, in the field of social security, the measures necessary, in conformity with Article 51 of the Treaty, to establish freedom of movement for workers as referred to in Article 48 of the Treaty, the question whether Community law, in a case such as this, prevents the withdrawal of the benefits at issue must be assessed in the light of the provisions of that regulation.

7 By virtue of Article 2 (1), Regulation No 1408/71 is to "apply to workers . . . who are nationals of one of the Member States . . . as also to the members of their families". Similarly, Article 48 guarantees free movement of persons only to workers of the Member States. As is clear from the documents before the Court, the national court raised its question in the context of the case of a child whose father is a national of a non-member country and whose mother is not an employed person. Under those conditions, Regulation No 1408/71 does not apply to this case.

8 During the hearing before the Court, Mr Meade contended that it was his wife rather than he who was entitled to family allowances, on the basis of various professional or trade activities in which she has engaged. In that connection, it is sufficient to note that, as regards the division of jurisdiction between the national courts and the Court of Justice, it is for the national court to establish the relevant facts in order to determine whether Mrs Meade is to be regarded as a worker within the meaning of Article 1 (a) of Regulation No 1408/71 and whether, in consequence, that regulation may be applied to her.

9 It should be added, as the Court stated in its judgment of 1 December 1977 (Case 66/77, *Kuyken* v *Rijksdienst voor Arbeidsvoorziening,* [1977] ECR 2311), that the position of a person who has gone to another Member State in order to follow a course of study and who, during that period, was not insured under a social security scheme set up for the benefit of employed persons does not come within the scope of the provisions of Articles 48 to 51 of the Treaty. It cannot thus be considered that withdrawal of family allowances payable to the parents of a child in that situation constitutes, as regards the latter, a restriction on the freedom of movement which is guaranteed by Article 48.

10 The answer to the question raised should thus be that neither Regulation No 1408/71 nor Article 48 of the Treaty prevents family allowances from being withdrawn pursuant to national legislation on the ground that a child is pursuing its studies in another Member State, where the parents of the child concerned are nationals of a non-member country or are not employed persons.

Costs

11 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber)

in answer to the question referred to it by the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole, Paris, by decision of 3 June 1983, hereby rules:

Neither Regulation No 1408/71 nor Article 48 of the Treaty prevents family allowances from being withdrawn pursuant to national legislation on the ground that a child is pursuing its studies in another Member State, where the parents of the child concerned are nationals of a non-member country or are not employed persons.

Galmot Everling Kakouris

Delivered in open court in Luxembourg on 5 July 1984.

J. A. Pompe
Deputy Registrar

Y. Galmot
President of the Third Chamber