

## JUDGMENT OF THE COURT (Third Chamber)

7 February 2019 (\*)

(Reference for a preliminary ruling — Social security — Regulation (EC) No 883/2004 — Article 67 — Application for family benefits submitted by a person who has ceased to pursue an activity as an employed person in the competent Member State but continues to reside there — Entitlement to family benefits for family members resident in another Member State — Eligibility conditions)

In Case C-322/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 15 May 2017, received at the Court on 30 May 2017, in the proceedings

**Eugen Bogatu**

v

**Minister for Social Protection,**

THE COURT (Third Chamber),

composed of M. Vilaras, President of the Fourth Chamber, acting as President of the Third Chamber, J. Malenovský (Rapporteur), L. Bay Larsen, M. Safjan and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 6 June 2018,

after considering the observations submitted on behalf of:

- Mr Bogatu, by C. Stamatescu, Solicitor, and D. Shortall, Barrister-at-Law,
- the Minister for Social Protection, by M. Browne, C. Keane and A. Morrissey, acting as Agents, and by M.D. Finan, Barrister-at-Law, and R. Mulcahy, Senior Counsel,
- the United Kingdom Government, by C. Crane and S. Brandon, acting as Agents, and by K. Apps, Barrister,
- the European Commission, by D. Martin and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 October 2018,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 11(2) and 67 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).

2 The request has been made in the context of a dispute between Mr Eugen Bogatu and the Minister for Social Protection (Ireland) ('the Minister') concerning the decision by which the Minister refused to pay Mr Bogatu family benefits for a portion of the period covered by his application.

### Legal context

3 Regulation (EEC) No 1408/71 of the Council 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) ('Regulation No 1408/71'), was repealed on 1 May 2010, the date on which Regulation No 883/2004 became applicable.

4 Article 2 of Regulation No 1408/71, headed 'Persons covered', stated in paragraph 1:

'This Regulation shall apply to employed or self-employed persons who are or have been subject to the legislation of one or more Member States ..., as well as to the members of their families ...'

5 Article 73 of that regulation, headed 'Employed or self-employed persons the members of whose families reside in a Member State other than the competent State', provided, in particular:

'An 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, ...'

6 Article 2 of Regulation No 883/2004, headed 'Persons covered', states in paragraph 1:

'This Regulation shall apply to nationals of a Member State ..., as well as to the members of their families ...'

7 Article 11 of that regulation, which is headed 'General rules' and falls in Title II, headed 'Determination of the legislation applicable', states, in particular, in paragraph 2:

'For the purposes of this Title, persons receiving cash benefits because or as a consequence of [an] activity as an employed ... person shall be considered to be pursuing the said activity. ...'

8 Article 67 of that regulation, which is headed 'Members of the family residing in another Member State' and is part of Chapter 8, which is headed 'Family benefits', under Title III, headed 'Special provisions concerning the various categories of benefits', states:

'A person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State. ...'

9 Article 68 of that regulation, which is headed 'Priority rules in the event of overlapping' and is part of the same chapter, provides, in particular:

'1. Where, during the same period and for the same family members, benefits are provided for under the legislation of more than one Member State the following priority rules shall apply:

(a) in the case of benefits payable by more than one Member State on different bases, the order of priority shall be as follows: firstly, rights available on the basis of an activity as an employed or self-employed person, secondly, rights available on the basis of receipt of a pension and finally, rights obtained on the basis of residence;

...'

## **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 10 Mr Bogatu is a Romanian national who has lived in Ireland since 2003. He is the father of two children who live in Romania.
- 11 Mr Bogatu pursued an activity as an employed person in Ireland between 26 May 2003 and 13 February 2009, the date on which he lost his job. Since then, he has received, in turn, a contributory unemployment benefit (from 20 February 2009 to 24 March 2010), then a non-contributory unemployment benefit (from 25 March 2010 to 4 January 2013) and finally a sickness benefit (from 15 January 2013 to 30 January 2015).
- 12 On 27 January 2009, he submitted a further claim in respect of family benefits.
- 13 By letters of 12 January 2011 and 16 January 2015, the Minister notified Mr Bogatu of his decision to approve that claim, except with regard to the period from 1 April 2010 to 31 January 2013. The Minister also notified Mr Bogatu that the reason for his refusal in respect of that period was that, during that period, Mr Bogatu did not fulfil any of the conditions needing to be satisfied in order to be entitled to family benefits for his children residing in Romania, since he was neither pursuing an activity as an employed person in Ireland nor receiving a contributory benefit there.
- 14 In his claim before the High Court (Ireland), Mr Bogatu does not dispute any of the facts on which the Minister has based his refusal, but claims that the Minister is relying on a misinterpretation of EU law.
- 15 In that regard, he submits, inter alia, that Article 67 of Regulation No 883/2004 must be interpreted in the same way as Article 73 of Regulation No 1408/71, from which it followed that any person insured in a Member State under a social security scheme applicable to employees was entitled to the corresponding family benefits for family members resident in another Member State, even if that person had ceased to pursue an activity as an employed person and was not receiving a contributory benefit.
- 16 The Minister argues in response that Article 67 of Regulation No 883/2004 cannot be interpreted in the same way as Article 73 of Regulation No 1408/71. Unlike the second of those articles, which applied to any ‘employed person’, the first uses the neutral word ‘person’. In addition, that word should itself be interpreted in the light of Article 11(2) of Regulation No 883/2004, which had no equivalent in Regulation No 1408/71, and from which it is apparent that a person who is no longer pursuing an activity as an employed person can continue to be considered to pursue that activity only if they receive cash benefits because or as a consequence of that activity as an employed person.
- 17 In its order for reference, the High Court points out, first, that it is not in dispute that Ireland is competent for the grant of family benefits to Mr Bogatu within the meaning of Article 67 of Regulation No 883/2004. Second, it notes that it is not generally necessary under Irish law that, either at the time of his application for family benefits or prior thereto, a person pursues or has pursued an activity as an employed person in Ireland in order to be entitled to those benefits, and that, in the specific case of a person in a situation such as that of Mr Bogatu, such entitlement is dependant only upon the satisfaction of the condition relating to the age of the child to which that person’s application to receive those benefits refers. Third, it explains that, in the present case, Mr Bogatu is entitled to receive family benefits under Irish law, subject to the implementation of Regulation No 883/2004.
- 18 In those circumstances the High Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does Regulation No 883/2004, and in particular Article 67 thereof, when read in conjunction with Article 11(2) thereof, require that, in order to be eligible for “family benefit” ..., a person must ... be employed ... in the competent Member State ... or alternatively be in receipt of the cash benefits referred to in Article 11(2) of [that regulation]?’

- (2) Is the reference to “cash benefits” in Article 11(2) of [Regulation No 883/2004] to be interpreted as referring only to a period during which a claimant is in actual receipt of cash benefits, or does it mean any period during which a claimant is covered for a cash benefit in the future, whether or not that benefit has been claimed at the time of application for family benefit?’

## Consideration of the questions referred

### *The first question*

- 19 By its first question, the referring court asks, in essence, whether Regulation No 883/2004 and, in particular, Article 67, read in conjunction with Article 11(2) thereof, must be interpreted as meaning that, in a situation such as that in the main proceedings, in order to be eligible to receive family benefits in the competent Member State, it is necessary for a person to pursue an activity as an employed person in that Member State or to be in receipt of cash benefits from that Member State because or as a consequence of such activity.
- 20 As follows from paragraphs 10 to 17 above, the referring court describes the situation at issue in the main proceedings as follows. First, the person applying for family benefits resides in the competent Member State, namely Ireland, and pursued an activity as an employed person there in the past, but has subsequently ceased pursuing such activity. Second, that person is the parent of two children who reside in another Member State, namely Romania. Third, the period in respect of which that person has requested that the referring court declare that he is entitled to receive family benefits is a period during which the competent Member State was providing him with a cash benefit classified as a ‘non-contributory allowance’ by national legislation.
- 21 In the light of that situation, it is appropriate to note, in the first place, that Article 67 of Regulation No 883/2004 states that a person is to be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State.
- 22 As is apparent from the wording of that article, although it refers to a ‘person’ being entitled to family benefits, it is not a condition of that article that any such person have a specific status and, therefore, it does not require, in particular, that he be an ‘employed person’. That being said, it does not itself set out the conditions to which the eligibility of that person for family benefits may be subject, but refers, in that regard, to the legislation of the relevant Member State.
- 23 Accordingly, in order to answer the question referred by the national court, it is necessary to interpret that article in the light of its context and the objective that it pursues.
- 24 First, with regard to the context of Article 67 of Regulation No 883/2004, it should be noted that that article must be read in conjunction, *inter alia*, with Article 68(1)(a) of that regulation, which is intended to apply where family benefits are provided for on different bases under the legislation of more than one Member State and which establishes, for such cases, priority rules requiring account to be taken, firstly, of rights available on the basis of an activity as an employed or self-employed person, secondly, of rights available on the basis of receipt of a pension and, finally, of rights obtained on the basis of residence.
- 25 As that provision refers to a number of bases giving rise to an entitlement to receive family benefits, including activity as an employed person, Article 67 of Regulation No 883/2004 cannot be considered to apply exclusively to entitlement on the basis of such activity.
- 26 Second, with regard to the objective pursued by Article 67 of Regulation No 883/2004, it should be noted that the objective of the EU legislature in adopting that regulation was, *inter alia*, to extend the scope of that regulation to categories of person other than employed persons falling under Regulation No 1408/71 and, in particular, to economically inactive persons who were not covered by the latter.

27 That objective is generally apparent from the EU legislature's decision to state in Article 2(1) of Regulation No 883/2004 that that regulation is to apply, inter alia, to 'nationals of a Member State' who are or have been subject to the legislation of one or more Member States, whereas Article 2(1) of Regulation No 1408/71 provided that that prior regulation applied to 'employed or self-employed persons' who are or have been subject to the legislation of one or more Member States.

28 With regard specifically to family benefits, that objective is reflected by the use in Article 67 of Regulation No 883/2004 of the word 'person' where Article 73 of Regulation No 1408/71, which was succeeded by the former provision, refers to an 'employed person'. In this respect, Article 67 of Regulation No 883/2004 reflects the intention of the EU legislature no longer to restrict the entitlement to family benefits solely to employed persons, but to extend it to other categories of person.

29 In the light of all of those factors, Article 67 of Regulation No 883/2004 must be interpreted as not requiring a given person to pursue an activity as an employed person in the competent Member State in order to be eligible for family benefits there.

30 In the second place, it follows from Article 11(2) of Regulation No 883/2004, to which the national court refers in its question, that a person receiving cash benefits because or as a consequence of activity as an employed person, that is to say, cash benefits the source of which is the fact of having pursued such activity in the past, must be considered, for the purpose of determining the legislation applicable to that person, to be pursuing such activity.

31 However, it follows from paragraph 25 above that Article 67 of Regulation No 883/2004 must be interpreted as not requiring the competence of a Member State for a given person with regard to family benefits to be based on the pursuance of any activity as an employed person, including past activity as an employed person.

32 It follows that the fact of receiving cash benefits covered, as the case may be, by Article 11(2) of Regulation No 883/2004 does not affect the conclusion in paragraph 29 above.

33 In the light of the findings above, the answer to the first question is that Regulation No 883/2004 and, in particular, Article 67, read in conjunction with Article 11(2) thereof, must be interpreted as meaning that, in a situation such as that in the main proceedings, in order to be eligible to receive family benefits in the competent Member State, it is not necessary for a person either to pursue an activity as an employed person in that Member State or to be in receipt of cash benefits from that Member State because or as a consequence of such activity.

### *The second question*

34 By its second question, the referring court asks, in essence, whether Article 11(2) of Regulation No 883/2004 must be interpreted as meaning that, when the relevant person submits his claim for family benefits, he must actually be in receipt of cash benefits or must be eligible to receive such cash benefits.

35 In view of the answer to the first question, there is no need to reply to the second question referred by the national court.

### **Costs**

36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

**Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and, in particular, Article 67, read in conjunction with Article 11(2) thereof, must be interpreted as meaning that, in a situation such as that in the main proceedings, in order to be eligible to receive family benefits in the competent Member State, it is not necessary for a person either to pursue an activity as an employed person in that Member State or to be in receipt of cash benefits from that Member State because or as a consequence of such activity.**

Vilaras

Malenovský

Bay Larsen

Safjan

Šváby

Delivered in open court in Luxembourg on 7 February 2019.

A. Calot Escobar

K. Lenaerts

Registrar

President

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\* Language of the case: English.