

SUMMARY

## **ECJ 15 December 2011, case C-257/10 (F&ouml;rs&auml;kringskassan - v - Elisabeth Bergstr&ouml;m), Social security**

### **Facts**

Mrs Bergström lived and worked in Switzerland for eight years. Her daughter was born there in March 2002. She then returned to Sweden with her husband and daughter in September 2002. Her husband immediately took up employment in Sweden, while Mrs Bergström remained unemployed in order to care for her daughter. In March 2003 she applied for Swedish “high-level parental benefits”. The National Social Insurance Office denied her high-level parental benefits, merely awarding her basic parental benefits. The reason was that the relevant Swedish law requires applicants for the high-level benefit to have worked in Sweden for the 240 days before the birth of their child.

### **National proceedings**

Mrs Bergström contested the denial of her application in court. The court of first instance turned down her claim but on appeal it was granted. The appellate court equated Mrs Bergström’s employment in Switzerland with employment in Sweden. The National Social Insurance Office appealed to the Supreme Administrative Court, which referred two questions to the ECJ on the interpretation of Article 72 of Regulation 1408/71 (the “Regulation”) and the corresponding Article 8 of the Agreement between the EC and Switzerland on the free movement of persons (the “Agreement”). Said Article 8 provides that “The Contracting Parties shall make provision [...] for the coordination of social security systems with the aim in particular of [...] aggregating, for the purpose of acquiring and retaining the right to benefits and of calculating such benefits, all periods taken into consideration by the national legislation of the countries concerned”. Said Article 72 provides that “Where the legislation of

a Member State makes acquisition of the right to benefits conditional upon completion of periods of insurance, employment or self-employment, the competent institution of that State shall take into account [...] periods of insurance, employment or self-employment completed in any other Member State, as if they were periods completed under the legislation which it administers”.

### **ECJ’s findings**

1.

Both the Agreement and the Regulation apply to a situation such as that of Mrs Bergström (α 26-34).

2.

The ECJ rejects the argument that the use of the expression "aggregation" implies that there must be at least two periods of employment, completed in more than one state and that, as Mrs Bergström was employed only in Switzerland, she did not qualify for the high level benefit (α 35-45).

3.

As for the amount of the benefit, Mrs Bergström’s qualifying income must be calculated by taking into account the income of a person who is employed, in Sweden, in a situation comparable to her situation and who also has professional experience and qualifications comparable to her professional experience and qualifications (α 46-53).

### **Ruling**

Article 8(c) of the Agreement between the European Community and its Member States on the one part, and the Swiss Confederation on the other [É] and Article 72 of Regulation (EEC) No 1408/71 must be interpreted as meaning that, where the legislation of a Member State makes the award of a family benefit [É] conditional upon completion of periods of insurance, employment or self-employment, the institution of that Member State which is competent to make such an award must take into account for those purposes periods completed in their entirety in the Swiss Confederation.

Article 8(a) of that Agreement and Articles 3(1), 23(1) and (2) and 72 of Regulation No 1408/71 must be interpreted as meaning that, where the amount of a family benefit, such as that at

issue in the case before the referring court, falls to be determined in accordance with the rules governing sickness benefit, that amount - awarded to a person who has completed in full the necessary employment periods for acquiring that right in the territory of the other Contracting Party - must be calculated by taking into account the income of a person who has comparable experience and qualifications and who is similarly employed in the Member State in which that benefit is sought.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2011-12-05

**Case number:** C-257/10