SUMMARY

ECJ 20 October 2011, case C-225/10 (Perez Garcia - v - Familienkasse Nürnberg), Free movement, Social insurance

Facts

Juan Perez Garcia, José Arias Neira, Fernando Barrera Castro and José Bernal Fernández (the "plaintiffs") were Spanish citizens who had been employed as migrant workers in Germany and who, following their retirement, returned to live in Spain. They received both German and Spanish old-age pensions and/or invalidity pensions. Each of them had a disabled child aged over 18.

This case concerns the inter-relationship between three (potential) social benefits:

- a German child benefit (Bundeskindergeldgesetz) to pensioners with dependent children (the "German dependent child benefit");
- a Spanish non-contributory invalidity pension payable to disabled persons from age 18 (the "Spanish invalidity pension");
- a Spanish allowance payable to pensioners with a disabled dependent child who is not in receipt of an invalidity pension (the "Spanish dependent child benefit").

The plaintiffs' disabled children were in receipt of Spanish invalidity pensions. For this reason, the plaintiffs were not eligible for Spanish dependent child benefits. The plaintiffs applied to the German organisation responsible for paying German dependent child benefits, the *Familienkasse*, in this case the *Familienkasse* in Nüremberg. They wished to receive German dependent child benefits. The *Familienkasse* rejected their applications on the ground that the plaintiffs' disabled children were entitled to claim Spanish invalidity pensions. Had

the plaintiffs claimed such pensions, which were higher than the German dependent child benefit, they would not have been entitled to German dependent child benefits, so the *Familienkasse* alleged, given Article 77(2)(b)(i) of Regulation 1408/71. This provision states that family allowances for pensioners who draw pensions under the legislation of more than one Member State shall be in accordance with the State of residence (in this case, Spain), provided that a right to those family allowances is "acquired" under the legislation of that State. Simply put, the Familienkasse argued: if you wanted, you could get Spanish dependent child benefits, but by intentionally not applying for them (so that you can collect Spanish invalidity pension) you are prejudicing our interests.

National proceedings

The plaintiffs appealed to the *Sozialgericht* in Nüremberg. This court referred three questions to the ECJ. The first two questions related to the word "acquired" in Article 77(2)(b)(i) of Regulation 1408/71. The third question is not relevant.

ECJ's findings

1. The ECJ begins by examining whether at least one of the social benefits at issue falls within Article 77 of the Regulation. That Article deals with "family allowances" as defined in the Regulation, being benefits "granted exclusively by reference to the number and, where appropriate, the age of members of the family". Clearly, a Spanish invalidity benefit is not such a benefit. However, when acceding to the Regulation, the Spanish government declared that Spanish invalidity benefits were covered by Article 77. Therefore, despite those benefits not being covered by the definition of "family allowances", they should be treated as if they were covered (§ 28-37).
2. Is a right to Spanish dependent child benefits "acquired" within the meaning of Article 77(2)(b)(i) of Regulation 1408/71 if that right is excluded only by reason of the potential beneficiary's own choice to be granted another benefit (in this case, a Spanish invalidity pension)? The German government argued that Article 76(2) of Regulation 1408/71, which deals with "family benefits" rather than "family allowances", should be applied by analogy. That would allow the Familienkasse to act as if the plaintiffs had chosen to receive Spanish dependent child benefits, and not Spanish invalidity benefits, in which case the plaintiffs would not be eligible to claim German dependent child benefits (§ 38-47).
3. The ECJ rejected the argument for analogous application of Article 76, mainly because EU legislation on the coordination of national social security legislation, taking particular account of its underlying objectives, cannot, except in the case of an express exception in conformity with those objectives, be applied in such a way as to deprive a migrant worker of benefits

granted under the legislation of a single Member State (in this case, Germany) on the basis solely on the insurance periods granted under that legislation (§ 48-55).

Ruling

Articles 77(2)(b)(i) and 78(2)(b)(i) of Council Regulation (EEC) No 1408/71 [...] must be interpreted as meaning that recipients of old age and/or invalidity pensions or the orphan of a deceased worker, to whom the legislation of several Member States applied, but whose pension or orphan's rights are based on the legislation of the former Member State of employment alone, are entitled to claim from the competent authorities of that State the full amount of the family allowances provided under that legislation for disabled children. This is the case even though they have not applied for comparable, higher allowances under the legislation of the Member State of residence, because they opted to be granted another benefit for disabled persons, which is incompatible with those, since the right to family allowances in the Member State of employment was acquired by reason of the legislation of that State alone.

Creator: European Court of Justice (ECJ)
Verdict at: 2011-10-20
Case number: C-225/10