

SUMMARY

ECJ 13 October 2022, case C-199/21 (Finanzamt Österreich), Social insurance

DN – v – Finanzamt Österreich, Austrian case

Summary

According to the Court of Justice, a person in receipt of pensions in two Member States is entitled to family benefits in accordance with the legislation of those two Member States. When the receipt of such benefits in one of those Member States is precluded pursuant to the national legislation, the priority rules referred to in Article 68(1) and (2) of Regulation No 883/2004 do not apply. The Court further held that national legislation which allows the recovery of family benefits awarded, where the parent entitled to such benefits pursuant to that legislation has not applied for them, to the other parent, whose application has been taken into account, in accordance with that provision, by the competent institution, and who in fact bears the entire cost associated with the maintenance of the child, is precluded.

Questions

How must the second sentence of Article 67 and Article 68(1) and (2) of Regulation No 883/2004 be interpreted in order to determine, where a person is in receipt of pensions in two Member States, in accordance with the legislation of which of those Member States that person is entitled, on a primary basis, as the case may be, to family benefits?

Must the third sentence of Article 60(1) of Regulation no 987/2009 be interpreted as precluding national legislation pursuant to which entitlement to family benefits is restricted to the parent who lives with the child, with the result that, even where that parent has not applied for such benefits, the other parent, who in fact bears the entire cost associated with the maintenance of the child, is not entitled to those benefits?

Ruling

The second sentence of Article 67 of Regulation No 883/2004 must be interpreted as meaning that, where a person is in receipt of pensions in two Member States, that person is entitled to family benefits in accordance with the legislation of those two Member States. Where the receipt of such benefits in one of those Member States is precluded pursuant to the national legislation, the priority rules referred to in Article 68(1) and (2) of that regulation do not apply.

The third sentence of Article 60(1) of Regulation (EC) No 987/2009 must be interpreted as precluding national legislation which allows the recovery of family benefits awarded, where the parent entitled to such benefits pursuant to that legislation has not applied for them, to the other parent, whose application has been taken into account, in accordance with that provision, by the competent institution, and who in fact bears the entire cost associated with the maintenance of the child.

Creator: European Court of Justice (ECJ)

Verdict at: 2022-10-13

Case number: C-199/21