

SUMMARY

ECJ 1 February 2017, case C-430/15 (Tolley), Free movement, social insurance

<p>Mrs Tolley, a disabled UK national, emigrated from the UK to Spain in 2002, at age 50. Before she left the UK, because she was unable to prepare a meal for herself, she was in receipt of DLA (disability living allowance) benefits. These benefits were stopped when she left the UK, because under UK law, only residents are eligible. Mrs Tolley appealed successfully to the First-tier Tribunal. Its decision was upheld by the Upper Tribunal and the Court of Appeal. The Secretary of State appealed to the Supreme Court, which referred questions to the ECJ, all relating to Regulation 1408/71 on the coordination of social security legislation within the EU (now Regulation 883/2004). The ECJ found in Mrs Tolley's favour.</p>

Summary

Mrs Tolley, a disabled UK national, emigrated from the UK to Spain in 2002, at age 50. Before she left the UK, because she was unable to prepare a meal for herself, she was in receipt of DLA (disability living allowance) benefits. These benefits were stopped when she left the UK, because under UK law, only residents are eligible. Mrs Tolley appealed successfully to the First-tier Tribunal. Its decision was upheld by the Upper Tribunal and the Court of Appeal. The Secretary of State appealed to the Supreme Court, which referred questions to the ECJ, all relating to Regulation 1408/71 on the coordination of social security legislation within the EU (now Regulation 883/2004). The ECJ found in Mrs Tolley's favour.

Judgment

-

A benefit such as the care component of disability living allowance is a sickness benefit for the purposes of Council Regulation (EEC) No 1408/71 [...].

-

Article 13(2)(f) of Regulation No 1408/71 [...] must be interpreted as meaning that the fact that a person has acquired rights to an old-age pension by virtue of the contributions paid during a given period to the social security scheme of a Member State does not preclude the legislation of that Member State from subsequently ceasing to be applicable to that person. It is for the national court to determine, in the light of the circumstances of the case before it and of the provisions of the applicable national law, when that legislation ceased to be applicable to that person.

-

Article 22(1)(b) of Regulation No 1408/71 [...] must be interpreted as preventing legislation of the competent State from making entitlement to an allowance such as that at issue in the main proceedings subject to a condition as to residence and presence on the territory of that Member State.

-

Article 22(1)(b) and Article 22(2) of Regulation No 1408/71 [...] must be interpreted as meaning that a person in a situation such as that at issue in the main proceedings retains the right to receive the benefits referred to in Article 22(1)(b) after transferring her residence to a Member State other than the competent State, provided that she has obtained authorisation for that purpose.

Creator: European Court of Justice (ECJ)

Verdict at: 2017-02-01

Case number: C-430/15 (Tolley)