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European case law and family benefits

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- I – Scope of family benefits
- II- Place of residence of family members
- III- Overlapping of benefits



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Broad scope

- "family benefit" means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption Allowances mentioned in Annex I
 - family benefits are intended to provide social assistance for workers with dependent families in the form of a contribution by society towards their expenses [Kromhout, 104/84]
 - an allowance which, being granted automatically to families meeting certain objective criteria, relating in particular to their size, income and capital resources, may be considered a family benefit [Bettacini, C-301/93 : family unit allowance paid to a person who is in receipt of an invalidity pension, the amount of the allowance not depending on the amount of the invalidity pension but fixed according to the family income and the number of persons making up the family unit]
 - Cash benefits to large families + monthly cash benefit, payable for three years, on the birth of the third child [Commission v. Greece, C-185/96]
 - «Family credit» encourages workers who are poorly paid to continue working; and secondly, is intended to meet family expenses since it is paid only where the claimant's family includes one or more children + amount varies according to the age of the children [Hughes, C-78/91]



Broad scope

- A benefit such as a child-raising allowance, which is automatically granted to persons fulfilling certain objective, legally defined criteria, without any individual and discretionary assessment of personal needs, which is intended to meet family expenses and more particularly to remunerate the service of bringing up a child, to meet other costs of caring for and bringing up a child and to mitigate the financial disadvantages entailed in giving up income from full-time employment [Hoever and Zachow, C-245/94]
- Home child-care allowance: public contribution to a family's budget to alleviate the financial burdens involved in the maintenance of children - close link between family expenses and the allowance [Maaheimo, C-333/00]
- Career break allowance granted to parents on parental leave are « assimilated » to family benefits [Commission v. Belgium, C-469/02]
- A benefit such as the advances on maintenance payments granted - objective: to relieve the financial burden borne by the parent awarded custody of children [Offermans, C-85/99]



Beneficiaries

- Spouse and former spouse
 - Where an employed person is subject to the legislation of a MS and lives with his or her family in another MS, **that person's spouse** is entitled to receive a benefit such as a child-raising allowance in the State of employment [Hoever et Zachow]
 - a **divorced person** who was paid family allowances by the competent institution of the MS in which she was living and where her ex-husband continues to live and work maintains in respect of her child, provided that child is recognised as a 'member of the family' of the ex-husband within the meaning of Article 1(f)(i), entitlement to such allowances even though she leaves that State and settles with her child in another MS, where she does not work, and even though her ex-husband could receive those allowances in his MS of residence. [Slanina, C-363/08]



Beneficiaries

- Child
 - where a minor child resides with the parent who has custody in a Member State other than the Member State providing the benefit, and where the other parent, who is under an obligation to pay maintenance, works or is unemployed in the Member State providing the benefit, that child is entitled to receive a family benefit such as the advance on maintenance payments [Humer]
- Non-active person
 - Regulation No 1408/71 does not preclude the legislation of a Member State from providing that a person who has ceased all occupational activity in its territory loses the right to continue to receive family benefits paid under that legislation on the ground that he has transferred his residence to another Member State where he lives with the members of his family [Kuusijärvi, C-275/96 - Those questions were raised in proceedings between Mrs Kuusijärvi, a Finnish national, and Riksförsäkringsverket (Swedish Social Security Board) concerning Mrs Kuusijärvi's entitlement to continued payment of parental benefits paid under Swedish legislation (where she worked) after she had transferred her residence to Finland, where she did not work]



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Waiving of residence clauses

- ECJ 17 May 1984, *Brusse*, 101/83
- ECJ 15 January 1986, *Pinna I*, 41/84
- ECJ 14 March 1989, *Baldi*, 1/88
- ECJ 22 February 1990, *Bronzino*, C-228/88
- ECJ 22 February 1990, *Gatto*, 12/89
- ECJ 5 October 1995, *Imbernon Martínez*, C-321/93
- ECJ 12 June 1997, *Merino García*, aff. C-266/95
- ECJ 30 January 1997, *Stöber & Pereira*, C-4/95 and C-5/95
- ECJ 12 June 1997, *Merino-García*, C-266/95
- ECJ 5 February 2002, *Humer*, C-255/99
- ECJ 7 November 2002, *Maaheimo*, C-333/00
- ECJ 7 September 2004, *Commission v. Belgium*, C-469/02
- ECJ 20 January 2005, *Laurin Effing*, C-302/02



Waiving of residence clauses

- So long as a **worker** remains subject to the social legislation of a Member State (MS) he is **entitled** to the family benefits provided for by the legislation of the first MS for members of his family residing in the territory of another MS, as if they were residing in the territory of the first State [**Baldi**]
 - Based on free movement of workers
- Article 52 of the Treaty precludes national rules which cause the taking of a **self-employed** person's children into account when **calculating** family allowances to be dependent upon their residing in that MS [**Stöber & Peireira**]



Assimilation of facts

- A condition of entitlement to certain family benefits whereby a worker' s child must be registered as unemployed with the employment office of the MS providing the benefits, a condition which can be fulfilled only if the child resides within the territory of that State, comes within the scope of Article 73 and must therefore be considered to be fulfilled where the child is registered as unemployed with the employment office of the MS in which he resides
[Bronzino]



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Priority rules: principles

- The principles underlying Regulation 1408/71 require that if the amount of the benefits payable in the state of residence is less than that of the benefits payable in the other state, the worker retains the right to the higher amount and is entitled to a supplement to the benefits from the competent institution of the latter state equal to the difference between the two amounts [Ferraioli, aff. 153/84]
 - article 10 (1) (a) of Reg. 574/72 suspends payment of family benefits or family allowances payable under the legislation of the state of employment **only up to the amount received, in respect of the same period and the same member of the family**, in the state of residence by the spouse pursuing a professional or trade activity within the territory of that state [Beeck, 104/80]
- Article 76 of Reg. 1408/71 seeks to give priority, in a case of overlapping family benefits, to the benefits of the MS in the territory of which the children reside and in which one of the recipients in question pursues a professional or trade activity [Robards, 149/82]



Reversal of priorities

- The exercise by a person having the care of children, and in particular, by the spouse of the person entitled, of a professional or trade activity in the MS of residence of the children suspends the right to allowances in pursuance of Article 73 of Regulation 1408/71 up to the amount of the allowances of the same kind actually paid by the State of residence, irrespective of who is designated as directly entitled to the family allowances by the legislation of the State of residence [McMenamin, C-119/91]
- Where a person having the care of children, in particular the spouse or partner of an employed person, carries out a professional or trade activity in the MS of residence, the family benefits must be paid by that MS, irrespective of who is designated as directly entitled to those benefits by the legislation of that State. In that situation, the payment of family benefits by the MS of employment is to be suspended up to the sum of family benefits provided for by the legislation of the MS of residence [Dodl et Oberhollenzer, C-543/03 –see also Ursula Weide, C-153/03, Slanina: divorced parents]



Impact of no effective payment

- There is no suspension of the entitlement to family allowances payable in the country of employment of one of the parents when the other parent resides with the children in another MS and pursues there a professional or trade activity **but does not receive family allowances for the children**, the reason being that not all the conditions laid down by the legislation of that MS for the actual receipt of such allowances are satisfied [Salzano, 191/83]
- Entitlement to family benefits in the MS in which one of the parents is employed is not to be suspended where the benefits or allowances are not payable or are no longer payable in the MS in whose territory the members of the family reside solely because they have not been applied for or re-applied for [Kracht, C-117/89]



Voluntary application of national law

- Article 13(2)(a) does not preclude a migrant worker, who is subject to the social security scheme of the MS of employment, from receiving, pursuant to the national legislation of the MS of residence, child benefit in the latter State
 - It follows that Community law does not require the competent German authorities to grant Mrs Bosmann the family benefit in question.
 - However, neither can the possibility of such a grant be excluded, because, as is clear from the contents of the file submitted to the Court, it is apparent that, under the German legislation, Mrs Bosmann may be entitled to child benefit solely because of her residence in Germany, which is for the national court to determine [Bosmann, C-352/06]



Voluntary application of national law

- Articles 14(1)(a) and 14a(1)(a) do not preclude a MS, which is not designated under those provisions as being the competent State, from granting child benefits in accordance with its national law to a migrant worker who is working temporarily within its territory
 - including in the case where it is established that the worker concerned has not suffered any legal disadvantage by reason of the fact that he has exercised his freedom of movement, since he has retained his entitlement to family benefits of the same kind in the competent MS,
 - and that neither that worker nor the child for whom the benefit is claimed habitually resides within the territory of the MS in which the temporary work was carried out.
- Rules of the FEU Treaty on the free movement of workers preclude the application of a rule of national law against overlapping in so far as it involves, not a reduction in the amount of the benefit corresponding to the amount of a comparable benefit received in another State, but exclusion from that benefit [\[ECJ 12 June 2012, Hudzinski, C-611/10\]](#)

