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Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

13 October 2022 (*)

(Reference for a preliminary ruling – Social security – Regulation (EC) No 883/2004 – Articles 67 and 68 – Family benefits – Right to benefits under a pension – Pensioner in receipt of pensions from two Member States – Member State(s) in which that pensioner is entitled to family benefits – Regulation (EC) No 987/2009 – Third sentence of Article 60(1) – Legislation of a Member State providing for the award of family benefits to the parent who has taken the child into his or her household – Failure by that parent to claim the award of those benefits – Obligation to take into account the application submitted by the other parent – Request for the recovery of family benefits paid to the other parent – Whether permissible)

In Case C-199/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzgericht (Federal Finance Court, Austria), made by decision of 19 March 2021, received at the Court on 30 March 2021, in the proceedings

DN

v

Finanzamt Österreich,

THE COURT (Seventh Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, F. Biltgen (Rapporteur) and J. Passer, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Czech Government, by J. Pavliš, M. Smolek and J. Vláčil, acting as Agents,
- the European Commission, by B.-R. Killmann and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 June 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the second sentence of Article 67 and Article 68(1) and (2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1) and of Article 60 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2009 L 284, p. 1).

2 The request has been made in proceedings between DN and the Finanzamt Österreich (Tax Office, Austria), formerly Finanzamt Wien (Tax Office, Vienna, Austria) (‘the tax authority’), concerning the recovery of family benefits which he received in Austria during the period from January to August 2013 in respect of the costs associated with the maintenance of his daughter living with his former wife in Poland.

Legal context

European Union law

Regulation No 883/2004

3 Under Article 1 of Regulation No 883/2004:

‘For the purposes of this Regulation:

...

(i) “member of the family” means:

...

3. if, under the legislation which is applicable under subparagraphs 1 and 2, a person is considered a member of the family or member of the household only if he/she lives in the same household as the insured person or pensioner, this condition shall be considered satisfied if the person in question is mainly dependent on the insured person or pensioner;

...

(q) “competent institution” means:

(i) the institution with which the person concerned is insured at the time of the application for benefit;

or

(ii) the institution from which the person concerned is or would be entitled to benefits if he/she or a member or members of his/her family resided in the Member State in which the institution is situated;

or

(iii) the institution designated by the competent authority of the Member State concerned;

or

(iv) in the case of a scheme relating to an employer's obligations in respect of the benefits set out in Article 3(1), either the employer or the insurer involved or, in default thereof, the body or authority designated by the competent authority of the Member State concerned;

...

(s) "competent Member State" means the Member State in which the competent institution is situated;

...

(z) "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.'

4 Article 2(1) of that regulation is worded as follows:

'This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.'

5 In accordance with Article 3(1)(j) of that regulation, the regulation is to apply to all legislation concerning the branches of social security which relate to family benefits.

6 In Title III, Chapter 8, of that regulation, relating to family benefits, Article 67 thereof, entitled 'Members of the family residing in another Member State', provides:

'A person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State. However, a pensioner shall be entitled to family benefits in accordance with the legislation of the Member State competent for his/her pension.'

7 Article 68 of Regulation No 883/2004, which also forms part of Chapter 8 and is entitled 'Priority rules in the event of overlapping', provides, in paragraphs 1 and 2 thereof:

'1. Where, during the same period and for the same family members, benefits are provided for under the legislation of more than one Member State the following priority rules shall apply:

(a) in the case of benefits payable by more than one Member State on different bases, the order of priority shall be as follows: firstly, rights available on the basis of an activity as an employed or self-employed person, secondly, rights available on the basis of receipt of a pension and finally, rights obtained on the basis of residence;

(b) in the case of benefits payable by more than one Member State on the same basis, the order of priority shall be established by referring to the following subsidiary criteria:

...

(ii) in the case of rights available on the basis of receipt of pensions: the place of residence of the children, provided that a pension is payable under its legislation, and additionally, where appropriate, the longest period of insurance or residence under the conflicting legislations;

...

2. In the case of overlapping entitlements, family benefits shall be provided in accordance with the legislation designated as having priority in accordance with paragraph 1. Entitlements to family benefits by virtue of other conflicting legislation or legislations shall be suspended up to the amount provided for by the first legislation and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. However, such a differential supplement does not need to be provided for children residing in another Member State when entitlement to the benefit in question is based on residence only.'

Regulation No 987/2009

8 Under Article 60(1) of Regulation No 987/2009:

'The application for family benefits shall be addressed to the competent institution. For the purposes of applying Articles 67 and 68 of [Regulation No 883/2004], the situation of the whole family shall be taken into account as if all the persons involved were subject to the legislation of the Member State concerned and residing there, in particular as regards a person's entitlement to claim such benefits. Where a person entitled to claim the benefits does not exercise his right, an application for family benefits submitted by the other parent, a person treated as a parent, or a person or institution acting as guardian of the child or children, shall be taken into account by the competent institution of the Member State whose legislation is applicable.'

9 Article 60(2) to (5) of that regulation provides, inter alia, for mechanisms for cooperation between the competent institutions of the different Member States for the purpose of applying Article 68 of Regulation No 883/2004.

Austrian law

10 Paragraph 2 of the Bundesgesetz betreffend den Familienlastenausgleich durch Beihilfen (Federal Law on compensation for family expenses by means of allowances) of 24 October 1967 (BGBl. 376/1967), in the version applicable to the dispute in the main proceedings ('the FLAG'), provides:

'(1) Persons who have their domicile or habitual residence in the federal territory shall be entitled to family allowances

...

(b) for adult children who have not yet reached the age of 24 and who are pursuing vocational training ...

...

(2) The person entitled to receive family allowances shall be the person to whose household the child referred to in paragraph 1 belongs. A person to whose household the child does not belong but who is mainly responsible for the costs of maintaining that child shall be entitled to family allowances where no other person is entitled to receive them under the first sentence of this subparagraph.

(3) For the purposes of this section, “children of a person” shall mean:

(a) that person’s descendants;

...

(5) A child shall belong to a person’s household where he or she shares with that person a dwelling that forms a single household. A child does not cease to belong to the household where

(a) the child stays outside the shared dwelling only temporarily,

...’

11 Under Paragraph 26(1) of the FLAG:

‘Any person who has received family allowances which are not due to him or her must repay the amounts in question.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Since 2001, DN, who was born in Poland, has been an Austrian national and has had his place of residence exclusively in Austria.

13 Until their divorce in 2011, he was married to a Polish national. She resides in Poland with their daughter, who was born in 1991 and is also a Polish national.

14 Since November 2011, DN has been in receipt of an early retirement pension from the competent Polish and Austrian institutions on the basis of insurance periods successively completed in Poland and Austria.

15 The dispute in the main proceedings concerns a request for the recovery of family allowances in the form of compensatory allowances and tax credits for the child (‘the family benefits at issue’) which the tax authorities had awarded to DN during the period from January to August 2013 in respect of the costs associated with the maintenance of his and his former wife’s daughter, who was studying in Poland, and to whom DN paid those benefits.

16 It is apparent from the order for reference that DN's former wife never made an application in Austria seeking the award of the family benefits at issue, those benefits having always been awarded to DN without any waiver declaration being required of his former wife.

17 Moreover, during that period, neither DN nor his former wife received any family benefits in Poland, since the amount of the pension that DN received in Austria exceeded the maximum amount of income conferring entitlement to such benefits.

18 By a decision of 12 November 2014, the tax authority ordered the recovery of the family benefits at issue on the ground that, in view of the fact that DN was in receipt of a Polish pension, the Republic of Austria was not competent to award those benefits. In addition, the tax authority stated that the obligation to pay the compensatory supplement under Article 68(2) of Regulation No 883/2004 did not apply to the Member State having secondary competence in cases where a pension is received.

19 In his action brought before the referring court, the Bundesfinanzgericht (Federal Finance Court, Austria), against that decision, DN submits that the conditions for payment by the Republic of Austria of the compensatory supplement under Article 68(2), read in conjunction with the relevant provisions of the FLAG, were satisfied.

20 Referring to the existence of two diverging lines of its case-law, the referring court states that, in so far as DN pursued an activity as an employed person in Austria in the exercise of freedom of movement for workers and receives a pension there on the basis of that activity, it is that Member State alone which is 'competent for his ... pension' within the meaning of the second sentence of Article 67 of Regulation No 883/2004. Therefore, according to that court, DN is entitled to the family benefits at issue and the only question which arises is whether the Republic of Austria must pay him those benefits on a primary or secondary basis. The competence of that Member State to award those benefits on one of those bases follows also from Article 68(2) of that regulation, the objective of which, in addition to preventing an unlawful overlapping of rights, is, by virtue of the mechanism of the differential supplement, to ensure the maximum amount of family benefits.

21 According to the referring court, entitlement to family benefits in Poland is subject, under Polish law, only to being resident in that Member State, whereas in Austria, it is based, under EU law, on being in receipt of a pension. In those circumstances, that court states that, pursuant to Article 68(1)(a) of Regulation No 883/2004, the Republic of Austria is the Member State having primary competence and must therefore pay the family benefits at issue in their entirety.

22 The referring court states that the tax authority's position that, in so far as both the Republic of Austria and the Republic of Poland are liable to pay a pension to DN, only Article 68(1)(b)(ii) of Regulation No 883/2004 applies, does not take account of Article 67 of that regulation and has the consequence that the Republic of Poland is the Member State having primary competence as the Member State where the daughter of DN and of his former wife resides. Even in that case, since, because the maximum amount of income conferring entitlement to family benefits in Poland was exceeded, those benefits would not have been paid, the Republic of Austria would have been required to pay a compensatory supplement under Article 68(2) of that regulation, up to an amount equal to that which it would have had to pay had it been the Member State having primary competence.

23 The referring court states that, in the alternative, the tax authority justifies its decision to recover the family benefits at issue in the light of the fact that, under Paragraph 2(2) of the FLAG, it is DN's former wife, residing with their child in Poland, who was entitled to the family benefits at

issue, with the result that those benefits, received by DN, must be recovered, even though his former wife is now time-barred from submitting an application for those benefits to be paid to her. The referring court asks whether the third sentence of Article 60(1) of Regulation No 987/2009, which provides that, where the person entitled to claim family benefits fails to exercise that right, an application for family benefits by the other parent must be taken into account by the competent institution of the Member State whose legislation is applicable, constitutes the basis for an entitlement on the part of that other parent to such benefits and, in that regard, whether it is relevant that that parent is mainly responsible for the maintenance of the child, as is the case here.

24 Furthermore, the referring court asks whether the mechanisms for cooperation between the competent institutions of the Member States whose legislation is applicable on a primary and secondary basis respectively, for the purposes of the award of family benefits, as provided for in Article 60 of Regulation No 987/2009, apply also to the recovery of those benefits.

25 In those circumstances, the Bundesfinanzgericht (Federal Finance Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the phrase “Member State competent for [the] pension” in the second sentence of Article 67 of [Regulation No 883/2004] to be interpreted as meaning that it refers to the Member State previously competent for family benefits as the State of employment and now required to pay an old-age pension, the right to which is based on the freedom of movement of workers previously exercised in its territory?

(2) Is the phrase “rights available on the basis of receipt of pensions” in Article 68(1)(b)(ii) of Regulation No 883/2004 to be interpreted as meaning that the right to family benefits is to be regarded as being available on the basis of receipt of pensions if, first, the laws of the EU or of the Member State governing the right to family benefits provide for receipt of pensions as a criterion and, second and additionally, the criterion of receipt of pensions is fulfilled in fact at a factual level, meaning that “simple receipt of pensions” does not fall under Article 68(1)(b)(ii) of Regulation No 883/2004 and [that] the Member State concerned [may] not ... be regarded as the “State of the pension” under EU law?

(3) If simple receipt of pensions suffices for the purpose of interpretation of the concept of the State of the pension:

In the case of receipt of an old-age pension, the right to which [accrued] under the migrant workers regulations and, prior to that, as a result of the pursuit of an activity as an employed person in a Member State in a period when neither the State of residence alone nor both States were Member States of the [European Union] or the European Economic Area, is the phrase “a differential supplement shall be provided, if necessary” in the second clause of the second sentence of Article 68(2) of Regulation No 883/2004 to be understood, in light of the judgment of 12 June 1980, *Laterza*, [(733/79, EU:C:1980:156),] as meaning that EU law guarantees family benefits to the maximum possible extent even in the case of receipt of pensions?

(4) Is the third sentence of Article 60(1) of Regulation ... No 987/2009 to be interpreted as meaning that it precludes Paragraph 2(5) of the FLAG ..., according to which, in the case of divorce, the right to the family allowance and tax credit for the child remains vested in the parent who is the head of the household but who has not made an application either in the State of residence or in the State of the pension for as long as the adult child in education is a member of his or her household, meaning that the other parent living as a pensioner in Austria, who in fact bears the entire cost of [financially] supporting the child, can exercise the right to the family allowance

and tax credit for the child against the institution of the Member State whose laws take precedence based directly on the third sentence of Article 60(1) of Regulation No 987/2009?

(5) Is the third sentence of Article 60(1) of Regulation No 987/2009 to be further interpreted as meaning that it is also necessary, in order to substantiate the standing of the EU worker as a party in the Member State family benefits procedure, that he/she is mainly responsible for the cost of maintenance within the meaning of Article 1(i)(3) of Regulation No 883/2004?

(6) Are the provisions governing the dialogue procedure in Article 60 of Regulation No 987/2009 to be interpreted as meaning that that procedure must be conducted by the institutions of the Member States involved not only where family benefits are granted, but also where family benefits are recovered?’

Consideration of the questions referred

The first to third questions

26 By its first to third questions, which it is appropriate to examine together, the referring court asks, in essence, how the second sentence of Article 67 and Article 68(1) and (2) of Regulation No 883/2004 must 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.

27 As a preliminary point, it must be stated that a person such as DN comes within the scope *ratione personae* of Regulation No 883/2004, which, according to Article 2(1) thereof, applies to nationals of a Member State residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.

28 In addition, the referring court states that the family benefits at issue are ‘family benefits’ within the meaning of Article 3(1)(j) of Regulation No 883/2004.

29 Article 67 of that regulation concerns, as follows from its title, the payment of family benefits, in particular, where the ‘members of the family [reside] in another Member State’. The second sentence of that article contains a special rule under which, in such a case, ‘a pensioner shall be entitled to family benefits in accordance with the legislation of the Member State competent for his/her pension’ (see, to that effect, judgment of 27 February 2014, *Würker*, C-32/13, EU:C:2014:107, paragraph 49).

30 As regards the Member State competent for a person’s pension, for the purposes of that sentence, it follows from Article 1(s) of Regulation No 883/2004 that, for the purposes of that provision, the concept ‘competent Member State’ designates the Member State in which the competent institution is situated, the latter being defined in Article 1(q) as being, inter alia, the institution with which the person concerned is insured at the time of the application for benefit or that from which the person concerned is or would be entitled to benefits if he or she or members of his or her family resided in the Member State in which the institution is situated.

31 Therefore, that concept of ‘competent Member State’ cannot be limited, for the purpose of applying the second sentence of Article 67 of Regulation No 883/2004, to designating the Member State required to pay a pension to the person concerned by reason of that person previously exercising his or her right to freedom of movement of workers in the territory of that Member State.

32 In the main proceedings, DN is in receipt of pensions from both the Republic of Poland and the Republic of Austria on account of insurance periods completed in those Member States. Consequently, each of those Member States must be regarded as ‘competent for his ... pension’ within the meaning of the provision referred to in the preceding paragraph, with the result that he is entitled to family benefits in accordance with the legislation of those two Member States.

33 Where several entitlements are payable under different national laws, the rules against overlapping benefits laid down in Article 68 of Regulation No 883/2004 must apply (see, to that effect, judgment of 18 September 2019, *Moser*, C-32/18, EU:C:2019:752, paragraph 40).

34 Nevertheless, it must be borne in mind that, according to the settled case-law of the Court, for a finding that such overlapping is present in a given case, it is not enough for family benefits to be due in one Member State and to be, in parallel, merely capable of being due in other Member States (see, to that effect, judgment of 22 October 2015, *Trapkowski*, C-378/14, EU:C:2015:720, paragraph 32 and the case-law cited).

35 As is apparent from the case-law of the Court, for it to be possible to regard family benefits as being due under the legislation of a Member State, the law of that State must recognise the right to the payment of benefits in favour of the member of the family concerned. It is thus necessary for the person concerned to fulfil all the conditions, as to both form and substance, imposed by the legislation of that State in order to be able to exercise that right (see, to that effect, judgment of 14 October 2010, *Schwemmer*, C-16/09, EU:C:2010:605, paragraph 53).

36 In the present case, it is apparent from the order for reference that neither DN nor his former wife was able to receive family benefits in Poland in respect of the costs of maintaining their daughter residing in that Member State, since the amount of the pension received by DN in Austria exceeded the maximum amount of income conferring entitlement to such benefits pursuant to the Polish legislation.

37 It follows that, since neither DN nor his former wife can claim family benefits in Poland, the priority rules referred to in Article 68 of Regulation No 883/2004 do not apply in a situation such as that at issue in the main proceedings.

38 Consequently, the answer to the first to third questions is that 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 fourth and fifth questions

39 It is apparent from the wording of the fourth and fifth questions, which it is appropriate to examine together, that, by those questions, the referring court asks whether the third sentence of Article 60(1) of Regulation No 987/2009 must 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.

40 In that regard, it should be borne in mind that, while Regulations No 883/2004 and No 987/2009 lay down the rules which enable the persons entitled to claim family benefits to be determined, the persons entitled to those benefits are, as follows from Article 67 of the former regulation, to be determined in accordance with national law (see, to that effect, judgment of 22 October 2015, *Trapkowski*, C-378/14, EU:C:2015:720, paragraphs 43 and 44).

41 In that context, the third sentence of Article 60(1) of Regulation No 987/2009 provides that, where a person entitled to claim family benefits does not exercise his or her right, the competent institutions of the Member States must take into account the applications for such benefits made by the persons or institutions referred to in that provision, which include the ‘other parent’.

42 The Court has previously had occasion to point out that, as is apparent from the wording and scheme of that provision, a distinction should be made between making a claim for family benefits and the right to receive such benefits. Although, as is also clear from the wording of that provision, it is sufficient if one of the persons able to claim the benefit of those family benefits makes an application for such benefits, so that the competent institution of the Member State concerned must take that application into consideration, EU law does not preclude such an institution, by applying national law, from finding that the person entitled to receive child benefits is a person other than the person who made the application for those benefits (see, to that effect, judgment of 22 October 2015, *Trapkowski*, C-378/14, EU:C:2015:720, paragraphs 46 to 48).

43 It follows that the third sentence of Article 60(1) of Regulation No 987/2009 does not preclude national legislation pursuant to which entitlement to family benefits is restricted to the parent living with the child, with the result that, even if that parent does not apply 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 (see, by analogy, judgment of 22 October 2015, *Trapkowski*, C-378/14, EU:C:2015:720, paragraph 50).

44 That being said, in the case in the main proceedings, while DN’s former wife, who lives with their daughter, has never applied for Austrian family allowances or tax credits, the tax authority granted the family benefits at issue to DN, without a waiver declaration being required of his former wife. In the dispute in the main proceedings, that tax authority is seeking to recover the family benefits at issue on the basis of Paragraph 26(1) of the FLAG, relying, in the alternative, on the national legislation referred to in paragraph 39 of this judgment.

45 Accordingly, it appears that, in the present case, DN’s application for family benefits was taken into account, in accordance with the third sentence of Article 60(1) of Regulation No 987/2009, by the tax authority which initially decided to grant it, which it is, however, for the referring court to verify.

46 It follows from this that, for the purpose of resolving the dispute in the main proceedings, it is necessary, in particular, to examine whether, in those circumstances, the recovery of the family benefits at issue subsequently claimed by the tax authority is contrary to that provision.

47 In that regard, it should be borne in mind that, in the context of the cooperation between national courts and the Court laid down by Article 267 TFEU, it is for the Court to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it in order to provide to the national court all the elements of interpretation which may be of use in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. It is for the Court to extract from all the information provided by the national court, in particular from the

grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the dispute (see, to that effect, judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 131 and the case-law cited).

48 In those circumstances, the fourth and fifth questions must be understood as asking, in essence, whether the third sentence of Article 60(1) of Regulation 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.

49 As is apparent from the wording of the third sentence of Article 60(1) of Regulation No 987/2009, while, where the parent entitled to the family benefits pursuant to the national legislation has not applied for them, the competent institution of the Member State concerned is required to take into account the application submitted by another person referred to in that provision, the option to reject the latter application on the ground that, pursuant to that legislation, that person is not the person entitled to receive those benefits is open to that institution.

50 In the case in the main proceedings, the tax authority, in so far as it granted DN's application for family benefits, did not exercise that option. In those circumstances, the decision of that authority to grant that application is consistent with the third sentence of Article 60(1) of Regulation No 987/2009.

51 It should be stated that that decision is, in the circumstances of the case in the main proceedings, consistent also with the purpose of Article 60(1) of that regulation which, on account of the reference it makes to Articles 67 and 68 of Regulation No 883/2004, corresponds to the purpose of the provisions of those articles (see, to that effect, judgment of 18 September 2019, *Moser*, C-32/18, EU:C:2019:752, paragraph 34).

52 In that regard, it must be borne in mind that, pursuant to Article 67 of Regulation No 883/2004, a person may claim family benefits, including for members of his or her family who reside in a Member State other than that responsible for paying those benefits, as if they resided in that Member State (see, to that effect, judgment of 22 October 2015, *Trapkowski*, C-378/14, EU:C:2015:720, paragraph 35). As the Advocate General observed in point 34 of his Opinion, that article implies a global approach, in the context of which the competent institution is required to examine the situation of the family as a whole in order to determine entitlement to family benefits, since those benefits, by their very nature, cannot be regarded as payable to an individual in isolation from his or her family circumstances (see, to that effect, judgment of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a frontier worker)*, C-802/18, EU:C:2020:269, paragraph 57 and the case-law cited).

53 Thus, in accordance with Article 1(z) of Regulation No 883/2004, the term '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 to that regulation. The Court has held that the phrase 'to meet family expenses' is to be interpreted as referring in particular to a public contribution to a family's budget to alleviate the financial burdens involved in the maintenance of children (judgment of 2 September 2021, *INPS (Childbirth and maternity allowances for holders of single permits)*, C-350/20, EU:C:2021:659, paragraph 57 and the case-law cited).

54 In the light of that purpose, it must be stated, as the Advocate General noted in point 38 of his Opinion, that, by providing that, where the parent entitled to family benefits pursuant to the national legislation has not applied for them, the application made, inter alia, by ‘the other parent’ must be taken into account, the third sentence of Article 60(1) of Regulation No 987/2009 seeks to ensure that, in all circumstances, those benefits, in accordance with their purpose, contribute to the family’s budget and meet the expenses incurred by the person who in fact bears the costs of maintaining the child.

55 It follows, as the Advocate General stated, in essence, in points 39 to 41 of his Opinion, that where the award of family benefits to ‘the other parent’, within the meaning of that provision, has had the effect of achieving the purpose of those benefits, a request for the recovery of those benefits runs counter to that purpose.

56 As is apparent from the order for reference, in the case in the main proceedings, DN, although he is not the parent entitled to the family benefits at issue pursuant to the Austrian legislation, mainly bears the costs of maintaining his daughter and paid her the family benefits which he received during the period at issue in that case.

57 It must be stated that, in those circumstances, the family benefits at issue have in fact achieved their objective, so that repayment of those benefits would run counter to the purpose of the third sentence of Article 60(1) of Regulation No 987/2009.

58 Consequently, the answer to the fourth and fifth questions is that the third sentence of Article 60(1) of Regulation 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.

The sixth question

59 In the light of the answer given to the first to fifth questions, there is no need to answer the sixth question.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

1. The second sentence of Article 67 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

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.

2. The third sentence of Article 60(1) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004

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.

[Signatures]

* Language of the case: German.
