

# Second civil chamber : Equivalence in national law of a social benefit obtained from another Member State

18/03/2021



**Equivalence in national law of a social benefit obtained from another Member State under the Article 5 of Regulation EC No 883/2004 of the European Parliament and of the Council of 29 april 2004 : application of the terms and conditions specified by the CJEU in response to the question referred for a preliminary ruling**

Ruling no 212 of 18 March 2021 (17-20.226) - Cour de cassation (Court of Cassation) - Second Civil Chamber -  
ECLI:FR:CCAS:2021:C200212

**Partial quashing**

Only the french version is authentic

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*Appellant(s) : Caisse d'assurance retraite et de la santé au travail (CARSAT) d'Alsace-Moselle (Alsace-Moselle pension and workplace health fund)*

*Respondent(s) : Mrs P... V... ; and others ;*

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## Facts and procedure

1. According to the ruling under appeal (Colmar, 27 April 2017), Mrs V... (the insured party), who resides in Germany, requested that the Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle (the fund) carry out the liquidation of her pension rights pursuant to French law, increasing the insured term for the education of a disabled child, based on the recognition of the child's disability under German social law.
2. As the fund refused to pay this supplement, the insured party made an appeal to a social security court.

## Reviewing pleas

### On the first part of the plea

#### Statement of plea

3. The fund criticises the ruling for having admitted the right to appeal, whereas "the application of the EU legislation cannot result in reverse discrimination, granting more rights to persons who have been subject to the benefit systems of other Member States than socially insured persons who have always been subject only to the French system ; that as rightly argued by the Fund before the cour d'appel (Court of Appeal), the increase in the period of insurance because of the disabled child assumes that the child suffered from a permanent disability of at least 80% ; that the cour d'appel (Court of Appeal) could rule as it did without verifying that Mrs V...'s daughter had suffered from a permanent disability of at least 80% ; that the cour d'appel (Court of Appeal) had infringed both Article 5 of Regulation EC No 883/2004 and Articles L. 351-4-1 and L. 541-1 of the Social Security Code."

## Court's response

In view of Articles L. 351-4-1, L. 541-1 and R. 541-1 of the Social Security Code, and 3 and 5 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, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 :

4. According to the first of these texts, an increase in the period of insurance is provided to socially insured persons raising a child that gives them the right, based on the second and third texts, to the child-rearing allowance for a disabled child and any supplement thereto when the permanent disability of the child is at least equal to 80%, or under certain conditions, 50%.

5. The Court of Justice of the European Union, having received a question referred for a preliminary ruling from the Cour de cassation (Court of Cassation), ruled on 12 March 2020 (CJEU, Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle, case C-769/18) :

"Article 3 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, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, must be interpreted as meaning that the support for integrating mentally disabled children and adolescents, provided for in Article 35a of the Eighth Book of the Sozialgesetzbuch (German Social Code), does not constitute a service, within the meaning of this Article 3, and, consequently, does not fall within the material scope of application of this regulation

Article 5 of Regulation No. 883/2004, as amended by Regulation No 988/2009, must be interpreted as meaning that :

the allowance for education of a disabled child, provided for in Article L. 541-1 of the French Social Security Code, and support for the integration of mentally disabled children and adolescents, according to Article 35a of the Eighth Book of the German Social Code, cannot be considered as services that are of an equivalent nature, within the meaning of point a of this Article 5 ;

the principle of assimilation of facts provided for in point b) of this Article 5 applies in circumstances such as those involved in the main proceedings. It is therefore up to the competent French authorities to determine if, in this case, the occurrence of the required event in the sense of this provision has been established. In this respect, the authorities must take into consideration such events that took place in Germany as if they had occurred on their own territory."

6. The Court of Justice specified, in the grounds of its decision : that these authorities must take into consideration such events that took place in Germany and cannot limit, in their evaluation of the permanent disability of the child in question, to only the criteria provided for in the guiding principles in France according to Article R. 541-1 of the French Social Security Code ; that in order to establish if the rate of permanent disability has been reached, they cannot refuse to take into consideration similar events that took place in Germany, which can be demonstrated by all elements of proof, including reports from medical examinations, certificates, or prescriptions for care or medication ; that in the case of such a verification, they must also respect the principle of proportionality by ensuring that, specifically, the principle of the assimilation of facts does not lead to results that are objectively unjustified, in compliance with recital 12 of Regulation No 883/2004.

7. To receive the appeal, the ruling states that the city of Stuttgart having provided to the insured party, starting on 10 November 1995, regular financial aid to lessen the burden of costs linked to her daughter's disability, based on Article 35a of the Eighth Book of the German Social Code, the insured person therefore received revenue linked to a disability likely to bring about a legal effect, and that the German and French benefits being equivalent for similar facts or events, she could apply, based on the European rule of coordination and without the fund being able to impose the disability rate of a minimum of 80%, for the career increase provided for by French law.

8. In so ruling, whereas the French and German benefits were not equivalent and it being up to the cour d'appel (Court of Appeal) to verify as such, under the terms and conditions noted in § 6 above, if the rate of permanent disability of the disabled child required by French law was reached, the cour d'appel (Court of Appeal) infringed the abovementioned texts.

**ON THESE GROUNDS, and without having to rule on the other objections, the Court :**

QUASHES AND SETS ASIDE, except the elements it deems admissible in the appeal and confirms the decision of 11 September 2012 of the amicable settlement board (commission de recours amiable) that set the effective date of the

pension of Mrs V... at 1 April 2011, the ruling of 27 April 2017 between the parties set out by the cour d'appel (Court of Appeal) of Colmar ;

**President : Mr Pireyre**

**Reporting Judge : Mrs Taillandier-Thomas**

**Advocate-General : Mr de Monteynard**

**Lawyers : SCP Gatineau, Fattaccini et Rebeyrol**

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