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Press and Information

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Judgment of the Court in Case C-302/02

Nils Laurin Effing

NATIONAL LEGISLATION WHICH MAKES FAMILY BENEFITS PAID TO THE MEMBERS OF THE FAMILY OF A PRISONER WHO IS A COMMUNITY NATIONAL SUBJECT TO THE CONDITION THAT HE REMAIN IN PRISON IN THAT STATE IS NOT CONTRARY TO THE PRINCIPLE OF EQUALITY

In the field of family benefits, when an employed person has been transferred, as a prisoner, to his own Member State in order to serve the remainder of his sentence, the legislation applicable is that of that Member State.

Ingo Effing, a German national, had his usual place of residence in Austria, where he was an employed person. In 2000, he was sentenced to a term of imprisonment. Nils Laurin Effing, his son, a minor and Austrian national, then began receiving advances on maintenance payments for the period from 1 June 2000 to 31 May 2003, under the Austrian Federal Law on the Grant of Advances for the Maintenance of Children.

Ingo Effing began serving his sentence at the Garsten prison, in Austria, but was subsequently transferred to his country of origin, Germany, to serve the remainder of his sentence. In the German prison, Ingo Effing performed paid work, in accordance with the obligation to work imposed on prisoners by German legislation.

Following the transfer, the Austrian authorities terminated the advances on maintenance payments received by the son, as the Austrian legislation requires that the person serve his sentence in Austria.

Further to proceedings brought on behalf of the son in order to obtain continuance of the advances on maintenance payments, the Oberster Gerichtshof (Supreme Court) referred a question to the Court of Justice of the European Communities for a preliminary ruling, asking whether the Austrian legislation, as interpreted by the Austrian authorities, gives rise to discrimination on grounds of nationality.

In its judgment, the Court of Justice notes that the Community legislation on social security schemes for workers moving within the EU¹ is intended to avoid complications which may result from the overlap of different sets of national legislation.

It states that, in accordance with settled case-law on the interpretation of the Regulation, advances on maintenance payments are family benefits and that Ingo Effing must be deemed to be an 'employed person', since he was covered by unemployment insurance during his period of incarceration in Germany.

The Regulation must be interpreted as meaning that, in a situation where a person, following a transfer, has **ceased carrying on all occupational activity in a State (Austria) and no longer resides there**, the grant of family benefits comes within the scope of **the legislation of the Member State where the person resides and, in this case, serves the remainder of his sentence (Germany)**. Accordingly, the legislation applicable to the person cannot be that of the Member State from which he was transferred.

On those grounds, the Court rules that **Community law allows a Member State to make the grant of family benefits to members of the family of an imprisoned Community national subject to the condition that he remain a prisoner in that State.**

Unofficial document for media use, not binding on the Court of Justice.

Languages available: EN, FR, DE

The full text of the Judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day of delivery.

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¹ The aim of Council Regulation (EEC) No 1408/71 of 14 June 1971, as amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, is to coordinate, in the context of the free movement of persons, national social security legislation, in accordance with the objectives of Article 42 EC. Article 3 of Regulation No 1408/71 ensures equality of treatment for workers covered by the Regulation in matters of social security without distinction as to nationality, in accordance with Article 39 EC.