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Press and Information

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Judgment of the Court of Justice in Case C-543/03

*Christine Dodl, Petra Oberhollenzer v Tiroler Gebietskrankenkasse*

**THERE ARE EXCEPTIONS TO THE PRINCIPLE THAT THE STATE OF EMPLOYMENT IS PRIMARILY RESPONSIBLE FOR PAYMENT OF FAMILY BENEFITS WHERE EMPLOYED PERSONS ARE ENTITLED TO THE SAME FAMILY BENEFITS BOTH IN THE STATE OF THEIR EMPLOYMENT AND - SOLELY ON THE GROUND OF THEIR RESIDENCE THERE - IN THE STATE IN WHICH THEY LIVE WITH THEIR FAMILY**

*Where the other parent is employed in the common State of residence, that State is primarily responsible for payment*

In order to ensure that workers are not deterred from exercising their right to freedom of movement, Regulation No 1408/71<sup>1</sup> guarantees all workers who are nationals of the Member States equality of treatment in regard to the different national laws and the enjoyment of social security benefits irrespective of the place of their employment or of their residence. The general rule is that the State in which the worker is employed is responsible for paying family benefits to the worker, even if that worker resides with his family in another Member State. However, where there is a risk that such benefits from the State of employment and the State of residence could overlap, rules of priority<sup>2</sup> prevent the possible overcompensation of family expenses.

Ms Dodl and Ms Oberhollenzer are Austrian nationals who work in Austria but live in Germany with their husband and partner respectively, both of whom have German nationality and work full-time in Germany. Following the births of their children, Ms Dodl and Ms Oberhollenzer took unpaid parental leave during which their employment relationship was

<sup>1</sup> Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001 (OJ 2001 L 187, p. 1).

<sup>2</sup> Laid down in Regulation No 1408/71 itself as well as in Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 (OJ English Special Edition 1972(I), p. 159), as amended and updated by Commission Regulation (EC) No 410/2002 of 27 February 2002 (OJ 2002 L 62, p. 17).

suspended. As fathers, the husband and partner respectively received the child allowance in Germany that corresponds to Austrian family allowance, but they did not receive the German national child-raising allowance because they were in full-time employment.

Ms Dodl and Ms Oberhollenzer were refused the German national child-raising allowance and the corresponding Austrian child-care allowance in each case on the ground that the other Member State was responsible for payment. They brought the matter before the Austrian courts and the Oberlandesgericht Innsbruck stayed proceedings and referred two questions to the Court of Justice of the European Communities. First, it asked whether Ms Dodl and Ms Oberhollenzer had lost the status of 'employed persons' within the meaning of Regulation No 1408/71 as a result of the suspension of their employment relationship, during which they were not required to pay social security contributions, and second, which Member State is primarily responsible for paying the family benefit in issue.

*The status of employed persons for the purpose of applying Regulation No 1408/71*

Pointing out that the definition in Community law of worker/employed or self-employed person varies according to the area in which the definition is to be applied, the Court holds that a person has the status of an employed person within the meaning of Regulation No 1408/71 where he is covered - even if only in respect of a single risk - on a compulsory or optional basis, by a general or special social security scheme, **irrespective of the existence of an employment relationship**. It will be for the national court to determine the facts.

*The rules of priority in the case of overlapping of rights to family benefits*

The Court notes that in Austria the mother is entitled to child-care allowance in her capacity as an employed person in that State. If Ms Dodl and Ms Oberhollenzer, who reside with their families in a Member State other than the State of employment, are 'employed persons', they acquire entitlement under Community law to family allowances in the State of employment, Austria.

It appears that Ms Dodl and Ms Oberhollenzer are also entitled to comparable family benefits in Germany, where they are resident. In Germany, one of the parents is entitled to receive a child-raising allowance solely on the basis that that parent and his or her child are resident there.

In such a situation of overlapping rights to family benefits in respect of the same member of that person's family and for the same period, the Member State of employment (in this case, Austria) is, in principle, primarily responsible for payment.

However, where a person having the care of children, in particular, the spouse or partner of the employed person concerned, carries out a professional or trade activity in the Member State in which the family resides, the family benefits must be paid by that State. It is not a requirement that the professional or trade activity be carried out by the person who is personally entitled to those benefits. In that situation, the payment of family benefits by the State of employment is to be suspended up to the sum of family benefits provided for by the legislation of the State of residence.

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

*Languages available: DE, EN, FR, IT*

*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 judgment is delivered.*

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