

JUDGMENT OF THE COURT (First Chamber)

1 February 2017 (*)

(Reference for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Care component of disability living allowance — Person insured against the risk of old age who has definitively ceased all occupational activity — Concepts of ‘sickness benefit and ‘invalidity benefit’ — Exportability)

In Case C-430/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court of the United Kingdom, made by decision of 29 July 2015, received at the Court on 5 August 2015, in the proceedings

Secretary of State for Work and Pensions

v

Tolley,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot, A. Arabadjiev (Rapporteur), C.G. Fernlund and S. Rodin, Judges,

Advocate General : H. Saugmandsgaard Øe,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 8 June 2016,

after considering the observations submitted on behalf of:

- Mrs Tolley (deceased, acting in the proceedings by her personal representative), by R. Drabble QC and T. Buley, Barrister, instructed by S. Clarke, Solicitor,
- the United Kingdom Government, by M. Holt and C. Crane, acting as Agents, B. Kennelly QC and D. Blundell, Barrister,
- the Norwegian Government, by P. Wennerås, M. Schei and C. Rydning, acting as Agents,
- the European Commission, by D. Martin and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 October 2016,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 307/1999 of 8 February 1999 (OJ 1999 L 38, p. 1) ('Regulation No 1408/71').
- 2 The request has been made in proceedings between the Secretary of State for Work and Pensions ('the Secretary of State') and Mrs Tolley, who died on 10 May 2011 and is acting in the main proceedings by her husband as her personal representative, concerning the withdrawal of her entitlement to the care component of disability living allowance ('DLA') on the ground that she no longer satisfied the conditions as to residence and presence in Great Britain.

Legal context

EU law

- 3 Regulation No 1408/71 has been replaced by 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 at OJ 2004 L 200, p. 1), which became applicable on 1 May 2010. However, in view of the date of the facts of the main proceedings, those proceedings remain governed by Regulation No 1408/71.
- 4 Article 1 of Regulation No 1408/71 provides:

'For the purpose of this Regulation:

(a) *employed person* and *self-employed person* mean respectively:

- (i) any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed or self-employed persons or by a special scheme for civil servants;
- (ii) any person who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this Regulation, under a social security scheme for all residents or for the whole working population if such person:
 - can be identified as an employed or self-employed person by virtue of the manner in which such scheme is administered or financed, or,
 - failing such criteria, is insured for some other contingency specified in Annex I under a scheme for employed or self-employed persons, or under a scheme referred to in (iii), either compulsorily or on an optional continued basis, or, where no such scheme exists in the Member State concerned, complies with the definition given in Annex I;

...

...

(o) *competent institution* means:

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

...

...

- (q) *competent State* means the Member State in whose territory the competent institution is situated;

...'

5 Article 2(1) of Regulation No 1408/71 provides:

'This Regulation shall apply to employed or self-employed persons and to students who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors.'

6 Article 4 of Regulation No 1408/71 states:

'1. This Regulation shall apply to all legislation concerning the following branches of social security:

- (a) sickness and maternity benefits;
- (b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;
- (c) old-age benefits;

...

2. This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory, and to schemes concerning the liability of an employer or shipowner in respect of the benefits referred to in paragraph 1.

...'

7 The first subparagraph of Article 10(1) of Regulation No 1408/71 is worded as follows:

'Save as otherwise provided in this Regulation, invalidity, old-age or survivors' cash benefits, pension for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.'

8 Article 13 of Regulation No 1408/71 provides:

'1. Subject to Articles 14c and 14f, persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.'

2. Subject to Articles 14 to 17:

- (a) a person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;

...

- (f) a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the foregoing subparagraphs or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'

9 Title III of Regulation No 1408/71, headed 'Special provisions relating to the various categories of benefits', is divided into eight chapters, the first of which relates to sickness and maternity. In that chapter, Section 2, headed 'Employed or self-employed persons and members of their families', includes Article 19, paragraph 1 of which provides:

'An employed or self-employed person residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, shall receive in the State in which he is resident:

...

- (b) cash benefits provided by the competent institution in accordance with the legislation which it administers. However, by agreement between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.'

10 Article 22 of Regulation No 1408/71, which is in the same section, states:

'1. An employed or self-employed person who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, and:

...

- (b) who, having become entitled to benefits chargeable to the competent institution, is authorised by that institution to return to the territory of the Member State where he resides, or to transfer his residence to the territory of another Member State;

...

shall be entitled:

...

- (ii) to cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. However, by agreement between the competent institution and the institution of the place of stay or residence, such benefits

may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.

2. The authorisation required under paragraph 1(b) may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or the receipt of medical treatment.

...’

11 Article 89 of Regulation No 1408/71 is worded as follows:

‘Special procedures for implementing the legislations of certain Member States are set out in Annex VI.’

12 Annex I to Regulation No 1408/71, headed ‘Persons covered by the Regulation’, includes section O, relating to the United Kingdom, which is worded as follows:

‘Any person who is an “employed earner” or a “self-employed earner” within the meaning of the legislation of Great Britain or of the legislation of Northern Ireland shall be regarded respectively as an employed person or a self-employed person within the meaning of Article 1(a)(ii) of the Regulation. Any person in respect of whom contributions are payable as an “employed person” or a “self-employed person” in accordance with the legislation of Gibraltar shall be regarded respectively as an employed person or a self-employed person within the meaning of Article 1(a)(ii) of the Regulation.’

13 In Annex VI to Regulation No 1408/71, headed ‘Special procedures for applying the legislations of certain Member States’, section O, relating to the United Kingdom, provides in point 19:

‘Subject to any conventions concluded with individual Member States, for the purposes of Article 13(2)(f) of the Regulation and Article 10b of the Implementing Regulation, United Kingdom legislation shall cease to apply at the end of the day on the latest of the following three days to any person previously subject to United Kingdom legislation as an employed or self-employed person:

...

(c) the last day of any period of receipt of United Kingdom sickness or maternity benefit (including benefits in kind for which the United Kingdom is the competent State) or unemployment benefit which

(i) began before the date of transfer of residence to another Member State or, if later,

(ii) immediately followed employment or self-employment in another Member State while that person was subject to United Kingdom legislation.’

14 Point 20 of section O of Annex VI provides:

‘The fact that a person has become subject to the legislation of another Member State in accordance with Article 13(2)(f) of the Regulation, Article 10b of the Implementing Regulation and point 19 above, shall not prevent:

(a) the application to him by the United Kingdom as the competent State of the provisions relating to employed or self-employed persons of Title III, Chapter 1 and

Chapter 2, Section 1 or Article 40(2) of the Regulation if he remains [an] employed or self-employed person for those purposes and was last so insured under the legislation of the United Kingdom;

- (b) his treatment as an employed or self-employed person for the purposes of Chapter 7 and 8 of Title III of the Regulation or Articles 10 or 10a of the Implementing Regulation, provided United Kingdom benefit under Chapter 1 of Title III is payable to him in accordance with paragraph (a).’

United Kingdom law

- 15 It is apparent from the judgment of the referring court that DLA is a non-contributory benefit whose purpose is to cater for the extra costs of requiring certain types of care or being unable or virtually unable to walk. DLA consists of a care component and a mobility component, is not means tested and is not an income replacement benefit as the recipient may be working.
- 16 Under section 71(6) of the Social Security Contributions and Benefits Act 1992 (‘the 1992 Act’), ‘a person shall not be entitled to [DLA] unless he satisfies prescribed conditions as to residence and presence in Great Britain’.
- 17 Those conditions as to residence and presence in Great Britain are specified in particular in regulation 2(1)(a) of the Social Security (Disability Living Allowance) Regulations 1991.

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

- 18 Mrs Tolley, a British national born on 17 April 1952, paid national insurance contributions during the period from 1967 to 1984. Subsequently, she was credited with contributions until 1993. If she had fulfilled the contribution conditions upon reaching the statutory retirement age, she could have been entitled to a State retirement pension.
- 19 From 26 July 1993, Mrs Tolley was awarded the care component of DLA on an indefinite basis, because she was unable to prepare a meal for herself.
- 20 On 5 November 2002, Mrs Tolley and her husband moved permanently to live in Spain. Mrs Tolley was not an employed person or a self-employed person in that Member State.
- 21 In 2007 the Secretary of State decided that Mrs Tolley’s entitlement to the care component of DLA had ceased on 6 November 2002. It is common ground that under the United Kingdom legislation she lost the right to DLA on that date.
- 22 Mrs Tolley then appealed against that decision to the First-tier Tribunal (United Kingdom). The First-tier Tribunal upheld the appeal, holding that she was entitled to continue to receive the care component of DLA after moving to Spain by virtue of Article 10 of Regulation No 1408/71.
- 23 The Secretary of State appealed against the decision of the First-tier Tribunal to the Upper Tribunal (United Kingdom). The Upper Tribunal decided that Mrs Tolley was entitled to the care component of DLA by virtue of Article 22 of Regulation No 1408/71, on the ground that, since she was insured against the risk of old age by reason of her national insurance contributions, she was an employed person within the meaning of Article 1(a) of that regulation.

- 24 The Court of Appeal (England and Wales) (United Kingdom) dismissed the appeal brought by the Secretary of State against the decision of the Upper Tribunal. The Secretary of State then appealed to the Supreme Court of the United Kingdom.
- 25 That court observes that the care component of DLA could be regarded as an invalidity benefit for the purpose of Regulation No 1408/71, capable of being exported, under Article 10 of that regulation, to another Member State. It states that the broad characteristic of the benefits listed in that provision is that they are long term or one-off payments in respect of permanent conditions. If, on the other hand, that allowance had to be regarded as being a sickness benefit, the question would arise whether the definition of ‘employed person’, set out in Article 1(a)(ii) of the regulation, also applies to the provisions of Chapter 1 of Title III of the regulation relating to sickness. It would not be logical to regard economically inactive persons as workers who should be treated more favourably than persons actively seeking a job.
- 26 In addition, as any entitlement of Mrs Tolley to a retirement pension under United Kingdom legislation was retained after she moved to Spain, the referring court seeks to ascertain whether the words ‘a person to whom the legislation of a Member State ceases to be applicable’ in Article 13(2)(f) of Regulation No 1408/71 refer to all the legislation of a Member State or only to its legislation relating to the benefit in question. If only the latter legislation is referred to, the Supreme Court of the United Kingdom considers that it may be wondered whether point 19(c) of section O of Annex VI to that regulation, which specifies when United Kingdom legislation ceases to apply, refers to actual receipt of benefit or instead merely to entitlement to it. The question also arises whether point 20 of section O imposes an obligation on the United Kingdom to pay the care component of DLA in accordance with Chapter 1 of Title III of the regulation.
- 27 In those circumstances, the Supreme Court of the United Kingdom decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Is the care component of [DLA] properly classified as an invalidity rather than a cash sickness benefit for the purpose of Regulation No 1408/71?
- (2) (i) Does a person who ceases to be entitled to [the care component of DLA] as a matter of [United Kingdom] domestic law, because she has moved to live in another Member State, and who has ceased all occupational activity before such move, but remains insured against old age under the [United Kingdom] social security system, cease to be subject to the legislation of the [United Kingdom] for the purpose of Article 13(2)(f) of Regulation No 1408/71?
- (ii) Does such a person in any event remain subject to the legislation of the [United Kingdom] in the light of point 19(c) of [section O of] Annex VI to the regulation?
- (iii) If she has ceased to be subject to the legislation of the [United Kingdom] within the meaning of Article 13(2)(f), is the [United Kingdom] obliged or merely permitted by virtue of point 20 of [section O of] Annex VI to apply the provisions of Chapter 1 of Title III to the regulation to her?
- (3) (i) Does the broad definition of an employed person in [the judgment of 7 June 2005, *Dodl and Oberhollenzer* (C-543/03, EU:C:2005:364),] apply for the purposes of Article 19 to 22 of the regulation, where the person has ceased all occupational activity before moving to another Member State, notwithstanding the distinction drawn in Chapter 1 of Title III between, on the one hand,

employed and self-employed persons and, on the other hand, unemployed persons?

- (ii) If it does apply, is such a person entitled to export the benefit by virtue of either Article 19 or Article 22? Does Article 22(1)(b) operate to prevent a claimant's entitlement to the care component of DLA being defeated by a residence requirement imposed by national legislation on a transfer of residence to another Member State?

Consideration of the questions referred

The first question

- 28 By its first question, the referring court asks, in essence, whether a benefit such as the care component of DLA is a sickness benefit or an invalidity benefit for the purposes of Regulation No 1408/71.

Admissibility

- 29 The United Kingdom Government submits that the first question referred for a preliminary ruling is inadmissible on the ground, first, that it was not the subject matter of argument before the referring court and, secondly, it is identical to a question raised in the case which gave rise to the judgment of 18 October 2007, *Commission v Parliament and Council* (C-299/05, EU:C:2007:608).
- 30 As regards the first ground of inadmissibility put forward by the United Kingdom Government, it should be pointed out that Article 267 TFEU gives national courts the widest discretion to refer matters to the Court if they consider that a case pending before them raises questions involving interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case. National courts thus have the power and, in certain cases, an obligation, to make a reference for a preliminary ruling once they find, either of their own motion or at the request of the parties, that the substance of the dispute involves a question to be resolved which falls within the scope of the first paragraph of that article. That is the reason why the fact that the parties to the main proceedings have not raised a point of EU law before the referring court does not preclude the latter from bringing the matter before the Court of Justice (judgment of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraphs 64 and 65 and the case-law cited).
- 31 The system of reference for a preliminary ruling is based on a dialogue between one court and another, the initiation of which depends entirely on the national court's assessment as to whether a reference is appropriate and necessary (judgment of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 66).
- 32 Furthermore, whilst it may well be in the interests of the proper administration of justice for a question not to be referred for a preliminary ruling until after both parties have been heard, it must nevertheless be recognised that the fact that they have been heard beforehand is not among the conditions required to set in motion the procedure under Article 267 TFEU (see, to that effect, judgment of 3 March 1994, *Eurico Italia and Others*, C-332/92, C-333/92 and C-335/92, EU:C:1994:79, paragraph 11).
- 33 It follows from the foregoing considerations that the fact that the parties to a dispute have not beforehand put argument before the national court on a question regarding EU law does not preclude that question from being referred to the Court.

34 As to the second ground of inadmissibility, it need merely be recalled that, even when there is case-law of the Court resolving the point of law at issue, national courts remain entirely at liberty to bring a matter before the Court if they consider it appropriate to do so, and the fact that the provisions whose interpretation is sought have already been interpreted by the Court does not deprive the Court of jurisdiction to give a further ruling (judgment of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraph 32 and the case-law cited).

35 Accordingly, the first question is admissible.

Substance

36 As a preliminary point, it should be determined whether the situation of Mrs Tolley falls within the scope of Regulation No 1408/71.

37 Article 2(1) of Regulation No 1408/71 states that the regulation is to apply to employed or self-employed persons and to students who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors.

38 According to the Court's case-law, a person has the status of an 'employed or self-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 referred to in Article 1(a) of that regulation, irrespective of the existence of relations as such a person (judgment of 10 March 2011, *Borger*, C-516/09, EU:C:2011:136, paragraph 26 and the case-law cited).

39 The referring court and the United Kingdom Government maintain, however, that the situation of Mrs Tolley falls within the second indent of Article 1(a)(ii) of Regulation No 1408/71, on the ground that the care component of DLA is payable to all residents, whether they are employed or not. As that provision refers to Annex I to the regulation, Mrs Tolley can be classified as an 'employed or self-employed person' only if she fulfils the conditions laid down by the United Kingdom legislation. However, that legislation refers only to persons who are engaged in a gainful activity.

40 In the present instance, it is apparent from the file placed before the Court that during the years from 1967 to 1993 Mrs Tolley was insured in the United Kingdom against the risk of old age under a social security scheme applying to all residents. It is not disputed that she could be identified as an employed person by virtue of the manner in which that scheme was administered and financed. As Mrs Tolley was thus insured for the contingency envisaged in Article 4(1)(c) of Regulation No 1408/71, she must be regarded as an employed or self-employed person for the purposes of the first indent of Article 1(a)(ii) of that regulation.

41 The fact that Mrs Tolley died before reaching the retirement age is not capable of calling that conclusion into question. Whether or not a person falls within the scope *ratione personae* of Regulation No 1408/71 does not depend on the materialisation of the contingency covered (see, to that effect, judgment of 10 March 2011, *Borger*, C-516/09, EU:C:2011:136, paragraph 30).

42 Therefore, the Court finds that a situation such as that at issue in the main proceedings falls within the scope *ratione personae* of Regulation No 1408/71.

43 Next, it should be recalled that a benefit is regarded as a social security benefit where it is granted without any individual and discretionary assessment of personal needs, on the basis

of a statutorily defined position, and it relates to one of the risks expressly listed in Article 4 (1) of Regulation No 1408/71 (judgment of 18 October 2007, *Commission v Parliament and Council*, C-299/05, EU:C:2007:608, paragraph 56 and the case-law cited).

- 44 In accordance with Article 4(1)(a) and (b) of Regulation No 1408/71, that regulation applies to legislation concerning the branches of social security that relate, respectively, to sickness benefits and to invalidity benefits, including invalidity benefits intended for the maintenance or improvement of earning capacity.
- 45 In order to distinguish between the various categories of social security benefits, the risk covered by each benefit must be taken into consideration (judgment of 18 July 2006, *De Cuyper*, C-406/04, EU:C:2006:491, paragraph 27).
- 46 In that regard, the Court has held that benefits which are granted objectively on the basis of a statutorily defined position and are intended to improve the state of health and quality of life of persons reliant on care have as their essential purpose supplementing sickness insurance benefits and must be regarded as ‘sickness benefits’ for the purposes of Article 4 (1)(a) of Regulation No 1408/71 (judgments of 5 March 1998, *Molenaar*, C-160/96, EU:C:1998:84, paragraphs 23 to 25, and of 18 October 2007, *Commission v Parliament and Council*, C-299/05, EU:C:2007:608, paragraph 61 and the case-law cited).
- 47 As regards the care component of DLA, it is apparent from the information provided by the referring court that the purpose of that non-contributory cash benefit, which is not means tested, is to compensate for the extra costs which a person may have to bear on account, inter alia, of being unable or virtually unable to walk.
- 48 It is not in dispute that grant of that benefit does not depend on an individual assessment of the claimant’s personal needs and that it is granted on the basis of objective criteria, such as the inability of the person to prepare a meal for himself, which are defined in the 1992 Act.
- 49 Nor is it contested that the benefit at issue in the main proceedings displays the same characteristics and has the same purpose as the DLA in force at the material time in the case which gave rise to the judgment of 18 October 2007, *Commission v Parliament and Council* (C-299/05, EU:C:2007:608).
- 50 In paragraph 65 et seq. of that judgment, the Court held, in essence, that, even though that allowance did not have the supplementing of sickness insurance benefits as its essential purpose, it had to be regarded, except so far as concerns its mobility component, as a sickness benefit for the purposes of Regulation No 1408/71.
- 51 Accordingly, the benefit at issue in the main proceedings is a sickness benefit for the purposes of Regulation No 1408/71.
- 52 Doubt is not cast on that conclusion by the argument put forward by the referring court that the allowance at issue in the main proceedings could be classified as an ‘invalidity benefit’ on the ground that it is similar to the benefits listed in Article 10(1) of Regulation No 1408/71, that is to say, invalidity cash benefits in particular, whose main characteristic is that they are long term or one-off payments in respect of permanent conditions.
- 53 The fact that, for the purposes of grant of the care component of DLA, the reduction in mobility must relate to a substantial period of time is not such as to change the purpose of that allowance, which is to improve the quality of life of persons reliant on care (see, by analogy, judgment of 18 October 2007, *Commission v Parliament and Council*, C-299/05, EU:C:2007:608, paragraph 63).

- 54 Furthermore, the Court has held that benefits, such as that at issue in the main proceedings, relating to the risk of reliance on care must be treated as sickness benefits, within the meaning of Article 4(1)(a) of Regulation No 1408/71, although, unlike sickness benefits *stricto sensu*, they are not in principle intended to be paid on a short-term basis and they may, particularly as regards the details of their application, display characteristics which in practice also resemble to a certain extent the invalidity and old-age branches (see, to that effect, judgment of 30 June 2011, *da Silva Martins*, C-388/09, EU:C:2011:439, paragraphs 47 and 48).
- 55 In the light of the foregoing, the answer to the first question is that a benefit such as the care component of DLA is a sickness benefit for the purposes of Regulation No 1408/71.
- The first and second parts of the second question*
- 56 By the first and second parts of its second question, the referring court asks, in essence, first, whether Article 13(2)(f) of Regulation No 1408/71 must be interpreted as meaning that the fact that a person has acquired rights to an old-age pension by virtue of the contributions paid during a given period to the social security scheme of a Member State precludes the legislation of that Member State from subsequently ceasing to be applicable to that person. If that question calls for an answer in the negative, the referring court seeks to ascertain, secondly, when the legislation of the United Kingdom ceased to be applicable to Mrs Tolley in the light of the fact that she continued to receive payments in respect of the care component of DLA until 2007, even though she had, under that legislation, lost the right to that benefit on account of her move to Spain in 2002.
- 57 Regulation No 1408/71 does not set up a common scheme of social security, but allows different national social security schemes to exist and its sole objective is to ensure the coordination of those schemes. It thus allows different schemes to continue to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by EU law (judgment of 21 February 2013, *Dumont de Chassart*, C-619/11, EU:C:2013:92, paragraph 40 and the case-law cited).
- 58 The provisions of Title II of Regulation No 1408/71, of which Article 13 forms part, constitute a complete and uniform system of conflict rules. Those provisions are intended not only to prevent the concurrent application of a number of national legislative systems and the complications which may ensue, but also to ensure that persons covered by Regulation No 1408/71 are not left without social security cover because there is no legislation which is applicable to them (judgment of 11 June 1998, *Kuusijärvi*, C-275/96, EU:C:1998:279, paragraph 28).
- 59 Thus, where a person falls within the scope *ratione personae* of Regulation No 1408/71, as defined in Article 2 thereof, the rule in Article 13(1) of the regulation that the legislation of a single Member State is to apply is in principle applicable and the national legislation applicable is determined in accordance with the provisions of Title II of the regulation (judgment of 19 March 2015, *Kik*, C-266/13, EU:C:2015:188, paragraph 47).
- 60 As regards Article 13(2) of Regulation No 1408/71, its sole purpose is to determine the national legislation applicable to persons who are in one of the situations referred to in subparagraphs (a) to (f) thereof (judgment of 11 June 1998, *Kuusijärvi*, C-275/96, EU:C:1998:279, paragraph 29).
- 61 So far as concerns, in particular, Article 13(2)(f), it should be noted that the fact that the legislation of a Member State ceases to be applicable constitutes a condition for the

application of that provision (see, to that effect, judgment of 19 March 2015, *Kik*, C-266/13, EU:C:2015:188, paragraph 51).

- 62 On the other hand, there is nothing in the wording of that provision to suggest that the fact that a person has acquired rights to an old-age pension by virtue of the contributions paid during a given period to the social security scheme of a Member State precludes the legislation of that State from subsequently ceasing to be applicable to that person.
- 63 Moreover, as the acquisition of rights to an old-age pension is the normal consequence of engaging in an occupation, to accept that a person cannot be subject to the legislation of a Member State other than the one in which he acquired such rights for the first time would effectively render Article 13(2)(f) of Regulation No 1408/71 meaningless.
- 64 The conditions under which the legislation of a Member State ceases to be applicable to a person are not defined in Article 13(2)(f) of Regulation No 1408/71. Thus, it is for the national legislation of each Member State to lay down those conditions (see, to that effect, judgment of 19 March 2015, *Kik*, C-266/13, EU:C:2015:188, paragraph 51).
- 65 Indeed, as is stated in Article 10b of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 (OJ, English Special Edition 1972 (I), p. 160), as amended by Council Regulation (EEC) No 2195/91 of 25 June 1991 (OJ 1991 L 206, p. 2), the date and conditions on which the legislation of a Member State ceases to be applicable to a person referred to in Article 13(2)(f) of Regulation No 1408/71 are to be determined in accordance with that legislation.
- 66 Furthermore, in determining when the legislation of a Member State ceases to be applicable to a person, account is also to be taken, where appropriate, of Annex VI to Regulation No 1408/71, which sets out special procedures for applying the legislation of certain Member States.
- 67 In the present instance, Mrs Tolley no longer paid contributions to the United Kingdom social security scheme from 1993, ceased all occupational activity, and left the United Kingdom in 2002. It is for the referring court to determine whether, under United Kingdom legislation, those circumstances resulted in Mrs Tolley ceasing to be insured under and leaving that scheme.
- 68 The same applies as regards the fact that Mrs Tolley continued to receive payments in respect of the care component of DLA until 2007, even though she had, under United Kingdom legislation, lost the right to that benefit on account of her move to Spain in 2002.
- 69 Having regard to the foregoing, the answer to the first and second parts of the second question is that Article 13(2)(f) of Regulation No 1408/71 must be interpreted as meaning that the fact that a person has acquired rights to an old-age pension by virtue of the contributions paid during a given period to the social security scheme of a Member State does not preclude the legislation of that Member State from subsequently ceasing to be applicable to that person. It is for the national court to determine, in the light of the circumstances of the case before it and of the provisions of the applicable national law, when that legislation ceased to be applicable to that person.

The third part of the second question and the third question

- 70 By the third part of its second question and its third question, which it is appropriate to examine together, the referring court asks, in essence, whether Article 19(1) and/or Article 22(1)(b) of Regulation No 1408/71 must be interpreted as preventing legislation of a

Member State from making entitlement to an allowance such as that at issue in the main proceedings subject to a condition as to residence and presence, such as the one laid down in section 71(6) of the 1992 Act.

- 71 It should be pointed out at the outset that Article 19 of Regulation No 1408/71, headed ‘Residence in a Member State other than the competent State — General rules’, guarantees, at the expense of the competent State, the right for an employed or self-employed person, as well as for members of that person’s family, residing in another Member State the condition of whom requires treatment in the territory of the Member State of residence to receive sickness benefits in kind provided by the institution of the latter Member State (judgment of 16 July 2009, *von Chamier-Glisczinski*, C-208/07, EU:C:2009:455, paragraph 42).
- 72 Consequently, as the Advocate General has observed, in essence, in point 84 of his Opinion, that provision relates only to situations in which an employed or self-employed person who applies to the competent institution of a Member State for a sickness benefit resides in another Member State on the date of his application.
- 73 In the present instance, it is apparent from the judgment of the referring court that Mrs Tolley was still residing in the United Kingdom when she applied to the competent institutions of that Member State for the care component of DLA. Thus, her situation manifestly does not fall within Article 19 of Regulation No 1408/71.
- 74 Next, Article 22(1)(b) of Regulation No 1408/71 concerns, inter alia, the situation where an employed or self-employed person transfers his residence during sickness to a Member State other than that of the competent institution (see, to that effect, judgment of 16 July 2009, *von Chamier-Glisczinski*, C-208/07, EU:C:2009:455, paragraph 45).
- 75 It must therefore be established whether Mrs Tolley’s situation is covered by Article 22(1)(b) of Regulation No 1408/71.
- 76 The United Kingdom Government submits, first, that the term ‘employed or self-employed person’ used in that provision covers only persons who, unlike Mrs Tolley, have not definitively ceased all occupational activity.
- 77 That line of argument cannot be upheld.
- 78 As stated in Article 1 of Regulation No 1408/71, the definitions contained in that provision, which include the definition of ‘employed person’ and ‘self-employed person’, are given ‘for the purposes of this Regulation’, without an exception concerning certain provisions of the regulation being laid down.
- 79 It is apparent from paragraphs 38 to 40 of the present judgment that Mrs Tolley must be regarded as an ‘employed or self-employed person’ for the purposes of the first indent of Article 1(a)(ii) of Regulation No 1408/71, irrespective of the fact that she definitively ceased all occupational activity.
- 80 Moreover, the Court has already held that, by the reference to an ‘employed or self-employed person’ in Article 22(1)(b) thereof, Regulation No 1408/71 does not seek to restrict the scope of that provision to active, as opposed to inactive, employed or self-employed persons (see, to that effect, judgment of 31 May 1979, *Pierik*, 182/78, EU:C:1979:142, paragraph 7).
- 81 The United Kingdom Government contends, secondly, that the legislation of the United Kingdom ceased to be applicable to Mrs Tolley when she moved to Spain and that, pursuant

to Article 13(2)(f) of Regulation No 1408/71, she was subject to the legislation of the latter Member State, which is therefore the competent State for the purposes of Article 22(1)(b) of the regulation.

- 82 As to these submissions, it is apparent on reading Article 1(o)(i) of Regulation No 1408/71 in conjunction with Article 1(q) that the term ‘competent State’ means, inter alia, the Member State where the institution with which the employed or self-employed person is insured at the time of the application for benefit is situated.
- 83 Furthermore, it is apparent from the scheme of Article 22(1) of Regulation No 1408/71, which lays down the conditions for the continued provision of benefits to which an employed or self-employed person is entitled under the legislation of the competent State inter alia if he transfers his residence ‘to the territory of another Member State’, that, in respect of that situation, the ‘competent State’, for the purposes of that provision, is necessarily the Member State which was competent to grant those benefits before the transfer of residence.
- 84 As regards the main proceedings, it is clear from the judgment of the referring court that, when Mrs Tolley applied to the competent institutions of the United Kingdom for DLA, she was insured under the social security scheme of that Member State. Consequently, even if the legislation of the United Kingdom ceased subsequently to be applicable to her, as provided for in Article 13(2)(f) of Regulation No 1408/71, it is the United Kingdom which is the competent State for the purposes of Article 22(1)(b) of the regulation.
- 85 That interpretation is borne out by point 20 of section O of Annex VI to Regulation No 1408/71, which provides that ‘the fact that a person has become subject to the legislation of another Member State in accordance with Article 13(2)(f) of the Regulation ... shall not prevent’, in particular, ‘the application to him by the United Kingdom as the competent State of the provisions relating to employed or self-employed persons of Title III, Chapter 1 ... if he remains [an] employed or self-employed person for those purposes and was last so insured under the legislation of the United Kingdom’. This provision expressly envisages the possibility of the United Kingdom remaining the competent State as referred to in the provisions of Chapter 1 of Title III of the regulation where its legislation ceases to apply to the employed or self-employed person, within the meaning of Article 13(2)(f) of the regulation.
- 86 It follows from the foregoing considerations that a situation such as that at issue in the main proceedings falls within Article 22(1)(b) of Regulation No 1408/71.
- 87 That provision lays down the right, for an employed or self-employed person who satisfies the conditions of the legislation of the competent State, to receive cash benefits provided by the competent institution after he has transferred his residence to the territory of another Member State.
- 88 In that regard, the argument of the United Kingdom Government that the words ‘satisfies the conditions of the legislation of the competent State’ permit the Member States to lay down a residence condition for provision of the cash benefits referred to in Article 22(1)(b) of Regulation No 1408/71 cannot succeed. As the Advocate General has observed in point 119 of his Opinion, referring to the Opinion of Advocate General Jacobs in *Kuusijärvi* (C-275/96, EU:C:1997:613), such an interpretation, by permitting the entitlement conferred by Article 22(1)(b) to be defeated by a national residence requirement, would render that provision entirely devoid of purpose.

- 89 It follows that Article 22(1)(b) of Regulation No 1408/71 prevents a competent State from making retention of entitlement to a benefit such as that at issue in the main proceedings subject to a condition as to residence and presence on its territory.
- 90 That having been explained, it should be noted that Article 22(1)(b) of Regulation No 1408/71 makes the right to export a benefit such as that at issue in the main proceedings subject to the condition that the employed or self-employed person has sought and obtained from the competent institution authorisation to transfer his residence to the territory of another Member State.
- 91 It is true that, as is evident from the first subparagraph of Article 22(2) of Regulation No 1408/71, authorisation may be refused only if it is established that movement of the person concerned would be prejudicial to his state of health or the receipt of medical treatment.
- 92 However, as the Advocate General has explained in points 124 to 126 of his Opinion, that provision cannot oblige the Member States to grant an employed or self-employed person the benefit of Article 22(1)(b) of the regulation where he has transferred his residence to the territory of another Member State in the absence of any authorisation granted by the competent institution.
- 93 In the light of the foregoing, the answer to the third part of the second question and the third question is that Article 22(1)(b) of Regulation No 1408/71 must be interpreted as preventing legislation of the competent State from making entitlement to an allowance such as that at issue in the main proceedings subject to a condition as to residence and presence on the territory of that Member State. Article 22(1)(b) and Article 22(2) of that regulation must be interpreted as meaning that a person in a situation such as that at issue in the main proceedings retains the right to receive the benefits referred to in Article 22(1)(b) after transferring his residence to a Member State other than the competent State, provided that he has obtained authorisation for that purpose.

Costs

- 94 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

- 1. A benefit such as the care component of disability living allowance is a sickness benefit for the purposes of 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 307/1999 of 8 February 1999.**
- 2. Article 13(2)(f) of Regulation No 1408/71, in the version amended and updated by Regulation No 118/97, as amended by Regulation No 307/1999, must be interpreted as meaning that the fact that a person has acquired rights to an old-age pension by virtue of the contributions paid during a given period to the social**

security scheme of a Member State does not preclude the legislation of that Member State from subsequently ceasing to be applicable to that person. It is for the national court to determine, in the light of the circumstances of the case before it and of the provisions of the applicable national law, when that legislation ceased to be applicable to that person.

3. Article 22(1)(b) of Regulation No 1408/71, in the version amended and updated by Regulation No 118/97, as amended by Regulation No 307/1999, must be interpreted as preventing legislation of the competent State from making entitlement to an allowance such as that at issue in the main proceedings subject to a condition as to residence and presence on the territory of that Member State.

Article 22(1)(b) and Article 22(2) of Regulation No 1408/71, in the version amended and updated by Regulation No 118/97, as amended by Regulation No 307/1999, must be interpreted as meaning that a person in a situation such as that at issue in the main proceedings retains the right to receive the benefits referred to in Article 22(1)(b) after transferring his residence to a Member State other than the competent State, provided that he has obtained authorisation for that purpose.

Silva de Lapuerta

Bonichot

Arabadjiev

Fernlund

Rodin

Delivered in open court in Luxembourg on 1 February 2017.

A. Calot Escobar

R. Silva de Lapuerta

Registrar

President of the First
Chamber

* Language of the case: English.