



3.3.2011

NOTICE TO MEMBERS

Subject: Petition 0584/2010 by Marie Maurice Christian Dubruel de Broglio (British), on transfer of his old age benefits from United Kingdom to France

Petition 0470/2010 by D. R. Burrage (British), on behalf of the British Expatriates Association (Spain), concerning fuel allowances for the elderly

1. Summary of petition 0584/2010

The petitioner, a British national residing in France, considers that the International Pension Centre in Newcastle upon Tyne was wrong to deny him the right to fuel payments. He requested that this old age benefit be transferred to France where he has been residing since 1986, but the British authorities replied that he was not entitled to it as he had left the United Kingdom before its introduction.

Summary of petition 0470/2010

The petitioner objects to the fact that he, together with many other British senior citizens resident abroad, is not eligible for fuel allowances paid to the elderly. He refers to a judgment of the European Union Court of Justice to the effect that the allowances must be paid to all senior citizens. However, the British authorities have changed the rules to the effect that those who move abroad before the age of 60 are no longer entitled to them. The petitioner argues that, under the Court judgment, the allowances come within the scope of Regulation 1408/71 on the application of social security schemes to employed persons and their families moving within the Community and Regulation 883/04 on the coordination of social security systems. The petitioner is accordingly seeking infringement proceedings against the United Kingdom for non-compliance with Community law.

2. Admissibility petition 0584/2010

Declared admissible on 4 October 2010. Information requested from Commission under Rule 202(6).

Admissibility petition 0470/2010

Declared admissible on 8 September 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 3 March 2011.

EU legislation on social security, as set out in Regulation (EC) No 883/2004¹, only covers the coordination of social security schemes for people who move around the European Union. It does not replace national social security schemes, which are entirely a matter for the Member States to organise and finance as they see fit. Regulation (EC) No 883/2004 aims to protect the social security rights of those who move, but in itself does not grant a right to benefits under national social security schemes. Entitlement to benefits is a matter for national law. The Member States must, of course, abide by the basic principles of EU law, such as non-discrimination on grounds of nationality, but there is no suggestion of any such discrimination in this case.

Regulation (EC) No 883/2004 provides that a person may export to another Member State a social security benefit that he or she is entitled to in his or her home Member State. A person may, for example, be in receipt of a UK old-age pension which is paid to him in another Member State. However, the UK winter fuel payment is a benefit separate from the old-age pension. It is a non-contributory benefit paid from a Social Fund and the UK can require recipients to meet the legislative requirements for entitlement to it (including being resident in the UK when he/she first claims the winter fuel payment) before it is obliged to export it. However, where a person becomes entitled to a winter fuel payment (by reaching the appropriate age and being resident in the UK at the relevant date) he or she can then export it to any other Member State.

Conclusion

The documents submitted with the petitions appear to suggest that the petitioners do not meet the relevant criteria to receive the winter fuel payment in another Member State because they did not qualify for it before leaving the UK. As explained above, it is permissible under EU law for a Member State to require that a person be entitled to a benefit like winter fuel payment in the UK before he or she can export it to another Member State (Article 7 of Regulation (EC) No 883/2004). The UK rules on this point therefore comply with EU law.

¹ 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 L 200, 7.6.2004, p. 1, as amended by Regulation (EC) No 988/2009 (OJ L 284, 30.10.2009, p. 43).