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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

18 December 2019 (*)

(Reference for a preliminary ruling — Social security — Coordination of social security systems — Regulation (EC) No 883/2004 — Article 3 — Matters covered — Old-age benefit — Freedom of movement for workers within the European Union — Regulation (EU) No 492/2011 — Article 7 — Equal treatment of national workers and migrant workers — Social advantages — Legislation of a Member State restricting the grant of an ‘additional benefit for sportspersons who have represented the State’ to the citizens of that State)

In Case C-447/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), made by decision of 29 May 2018, received at the Court on 9 July 2018, in the proceedings

UB

v

Generálny riaditeľ Sociálnej poisťovne Bratislava,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, K. Lenaerts, President of the Court, R. Silva de Lapuerta, Vice-President of the Court, acting as Judges of the Third Chamber, L.S. Rossi (Rapporteur) and F. Biltgen, Judges,

Advocate General: E. Tanchev,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 7 May 2019,

after considering the observations submitted on behalf of:

- the Slovak Government, by B. Ricziová and M. Kianička, acting as Agents,
- the Czech Government, by M. Smolek, J. Pavliš, J. Vláčil and L. Dvořáková, acting as Agents,
- the European Commission, by D. Martin, A. Tokár and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(w) and Articles 4 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 (OJ 2004 L 166, p. 1, corrigendum OJ 2004 L 200, p. 1), and of Article 34(1) and (2) of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between UB and the Generálny riaditeľ Sociálnej poisťovne Bratislava (Director-General of the Social Insurance Agency, Bratislava, Slovakia) concerning the legality of the decision refusing to grant UB an additional benefit paid to certain high-level sportspersons.

Legal context

European Union law

3 Article 1 of Regulation No 883/2004, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation:

...

(w) “pension” covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions and, subject to the provisions of Title III, revaluation increases or supplementary allowances;

...’

4 Article 3 of that regulation, entitled ‘Matters covered’, provides:

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

(a) sickness benefits;

- (b) maternity and equivalent paternity benefits;
- (c) invalidity benefits;
- (d) old-age benefits;
- (e) survivors benefits;
- (f) benefits in respect of accidents at work and occupational diseases;
- (g) death grants;
- (h) unemployment benefits;
- (i) pre-retirement benefits;
- (j) family benefits.

...

3. This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70.

...'

5 Article 4 of that regulation, entitled 'Equality of treatment', is worded as follows:

'Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.'

6 Article 5 of that same regulation, entitled 'Equal treatment of benefits, income, facts or events', states:

'Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;

(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.'

7 Title III of Regulation No 883/2004 contains Chapter 9 thereof, which is entitled 'Special non-contributory cash benefits'. That chapter contains a single article, namely Article 70 of that regulation, itself entitled 'General provision', which provides, in paragraphs 1 and 2 thereof:

‘1. This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance.

2. For the purposes of this Chapter, “special non-contributory cash benefits” means those which:

(a) are intended to provide either:

(i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned; or

(ii) solely specific protection for the disabled, closely linked to the said person’s social environment in the Member State concerned,

and

(b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone,

and

(c) are listed in Annex X.’

8 Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1) provides, in paragraphs 1 and 2 thereof:

‘1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.’

Slovak law

9 Paragraph 1 of the zákon č. 112/2015 Z.z. o príspevku športovému reprezentantovi a o zmene a doplnení zákona č. 461/2003 Z.z. o sociálnom poistení v znení neskorších predpisov (Law No 112/2015 on an additional benefit for sportspersons who have represented the State, amending Law No 461/2003 on social insurance), in the version applicable to the dispute in the main proceedings (‘Law No 112/2015’), provides:

‘This law governs the granting of an additional benefit to sportspersons who have represented the State (“the additional benefit”) as a State social benefit, the purpose of which is to provide a financial guarantee to sportspersons who — as representatives of the Czechoslovak Republic, the

Czechoslovak Socialist Republic, the Czechoslovak Federative Republic, the Czech and Slovak Federative Republic or the Slovak Republic — have obtained medals in the Olympic Games, the Paralympic Games, the Deaflympics, the World Championships or the European Championships.’

10 Paragraph 2(1) of that law provides:

‘A natural person who:

(a) as a sporting representative of the Czechoslovak Republic, the Czechoslovak Socialist Republic, the Czechoslovak Federative Republic, the Czech and Slovak Federative Republic or the Slovak Republic has obtained

1. a gold medal (first place), a silver medal (second place) or a bronze medal (third place) in the Olympic Games, the Paralympic Games or the Deaflympics;

2. a gold medal (first place), a silver medal (second place) or a bronze medal (third place) in the World Championships or a gold medal (first place) in the European Championships in a sporting discipline included by the International Olympic Committee in the Olympic Games, by the International Paralympic Committee in the Paralympic Games, or by the International Committee of Sports for the Deaf in the Deaflympics immediately prior to the World Championships or the European Championships, or which were held in the year in which the World Championships or the European Championships were held;

(b) is a citizen of the Slovak Republic;

(c) is permanently resident in the Slovak Republic or is a person to whom a special provision applies;

(d) does not receive a similar benefit from abroad;

(e) has reached pensionable age; and

(f) has applied to exercise his right to a pension benefit in accordance with the special rules,

shall be entitled to the additional benefit.’

11 Paragraph 3 of that law states:

‘The amount of the benefit shall consist of the difference between

(a) EUR 750 and the sum of the amounts of pension benefits granted under the special rules and similar pension benefits paid abroad, provided that the natural person has obtained

1. a gold medal as referred to in Paragraph 2(1)(a)(1);

2. a gold medal as referred to in Paragraph 2(1)(a)(2) in the World Championships; or

(b) EUR 600 and the sum of the amounts of pension benefits granted under the special rules and similar pension benefits paid abroad, provided that the natural person has obtained

1. a silver medal as referred to in Paragraph 2(1)(a)(1);

2. a silver medal as referred to in Paragraph 2(1)(a)(2) in the World Championships; or
- (c) EUR 500 and the sum of the amounts of pension benefits granted under the special rules and similar pension benefits paid abroad, provided that the natural person has obtained
1. a bronze medal as referred to in Paragraph 2(1)(a)(1);
 2. a bronze medal as referred to in Paragraph 2(1)(a)(2) in the World Championships; or
 3. a gold medal as referred to in Paragraph 2(1)(a)(2) in the European Championships.’

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

12 In 1971, UB, a Czech national who has been resident for 52 years in the territory which is now Slovakia, obtained a gold medal in the Ice Hockey European Championships and a silver medal in the Ice Hockey World Championships as a member of the national team of the Czechoslovak Socialist Republic.

13 Following the dissolution of the Czech and Slovak Federative Republic at midnight on 31 December 1992, UB chose Czech nationality. However, he continued to be resident in Slovakia. At the hearing, the Slovak Government also explained, without being contradicted on that point by the other persons concerned, that, at the time of the accession of the Slovak Republic and the Czech Republic to the European Union on 1 May 2004, UB was employed in a primary school and continued in that post until at least 2006.

14 On 17 December 2015, UB applied to receive the additional benefit for sportspersons who have represented the State provided for by Law No 112/2015 (‘the additional benefit for sportspersons who have represented the State’). After finding that the person concerned did not satisfy the condition relating to possession of Slovak citizenship referred to in Paragraph 2(1)(b) of that law, the Bratislava Social Insurance Agency rejected that application.

15 UB brought an action against that decision before the Krajský súd v Košiciach (Regional Court, Košice, Slovakia), arguing that, in the light of EU law, the Slovak legislation was discriminatory on the basis of nationality and that it failed to take account of the fact that he had been resident in Slovakia for 52 years.

16 Since that action was dismissed, UB lodged an appeal on a point of law before the referring court.

17 That court finds, on reading the preparatory work for Law No 112/2015, that the Slovak legislature based its decision to make receipt of the additional benefit at issue in the main proceedings conditional upon possession of Slovak citizenship on the fact that that additional benefit is a State social benefit and not a pension benefit and that its purpose is to contribute to the financial security of high-level sportspersons who, as Slovak nationals, have represented the Slovak Republic or its legal predecessors in important international sporting competitions. Furthermore, that law was not intended to be applied to sportspersons who had represented the State but were nationals of other States.

18 However, according to the referring court, first, the additional benefit for sportspersons who have represented the State is not only a State social benefit, given that it is paid on a regular basis and in parallel with the pension benefit in order to bring the amount of the pension benefit into line

with the amounts set out in Paragraph 3(a) to (c) of that law. Second, UB, as a person who has represented the State in a team sport, has been treated differently from his team mates solely because of the fact that, unlike them, he is not a Slovak national, although he too contributed, through his sporting efforts and skills, to the collective results of the national team.

19 In those circumstances, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘In the circumstances of the main proceedings, is it possible to interpret Article 1(w), Article 4 and Article 5 of Regulation [No 883/2004], considered in conjunction with the right to social security benefits and social advantages, as enshrined in Article 34(1) and (2) of the [Charter], as precluding the application of a provision of national legislation pursuant to which the Slovak social security body is to take into consideration an applicant’s citizenship as a fundamental condition for the purposes of determining the right of national sports representatives to a benefit in addition to the old-age pension, even if another statutory requirement, namely the fact of having represented the legal predecessors of the State, including the Czechoslovak Socialist Republic, is also part of that provision of national legislation?’

Consideration of the question referred

20 By its question, the referring court seeks to ascertain, in essence, whether Article 1(w) and Articles 4 and 5 of Regulation No 883/2004, read in conjunction with Article 34(1) and (2) of the Charter, are to be interpreted as precluding legislation of a Member State which makes receipt of an additional benefit introduced for certain high-level sportspersons who have represented that Member State or its legal predecessors in international sporting competitions conditional upon, in particular, the person applying for the benefit having the nationality of that Member State.

21 In order to answer that question, it must first be verified whether an additional benefit such as that at issue in the main proceedings falls within the material scope of Regulation No 883/2004.

22 In that regard, it should be borne in mind that, according to the settled case-law of the Court, the distinction between benefits falling within the scope of Regulation No 883/2004 and those which are outside it is based essentially on the constituent elements of each benefit, in particular its purpose and the conditions for its grant, and not on whether it is classified as a social security benefit by national legislation (judgment of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraph 31 and the case-law cited).

23 Thus, a benefit may be regarded as a social security benefit in so far as it is granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and provided that it relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004 (judgment of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraph 32 and the case-law cited).

24 Given that the two conditions mentioned in the preceding paragraph are cumulative, the fact that one of them is not satisfied will mean that the benefit in question does not fall within the scope of Regulation No 883/2004 (judgment of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraph 33).

25 Concerning, in particular, the second condition, it is necessary to examine whether a benefit such as that at issue in the main proceedings relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004.

26 As regards, in particular, the classification of a social benefit as an old-age benefit as referred to in Article 3(1)(d) of that regulation, the Court has specified that a supplementary allowance paid exclusively to persons entitled to a retirement and/or survivor's pension and financed by the same resources that are used to finance the retirement and survivor's pensions which is linked to the retirement pension, providing the recipients with means of subsistence by ensuring that they receive a financial supplement, may be classified as such a benefit (see, to that effect, judgments of 20 January 2005, *Noteboom*, C-101/04, EU:C:2005:51, paragraphs 25 to 29, and of 16 September 2015, *Commission v Slovakia*, C-361/13, EU:C:2015:601, paragraph 56).

27 In the present case, it should first of all be noted that, although one of the purposes of the additional benefit for sportspersons who have represented the State is 'to provide a financial guarantee to sportspersons' as is expressly stated in Paragraph 1 of Law No 112/2015, it is apparent from the case file submitted to the Court that the main reason for that additional benefit is to recognise the exceptional efforts made and remarkable results obtained by a very limited number of high-level sportspersons in certain international sporting competitions. The essential purpose of that additional benefit is, therefore, to compensate its recipients for the feats they have accomplished while representing their country in the field of sport.

28 Next, that essential purpose accounts for the fact that, first, the additional benefit is financed directly by the State, not using the national social security sources of financing and regardless of the contributions paid by its recipients, and, second, it is not paid to all sportspersons who have taken part in such competitions, but only to a very limited number of such sportspersons who have, in that context, obtained certain medals.

29 Lastly, although the maximum amount of the additional benefit at issue in the main proceedings is capped by reference to a retirement pension which the recipient might also receive, the payment of that additional benefit is not conditional upon the right of the recipient to receive such a pension but only upon an application to that effect being made by that recipient.

30 Accordingly, an additional benefit such as that at issue in the main proceedings cannot be regarded as being an old-age benefit and, consequently, does not relate to any of the risks expressly listed in Article 3(1) of Regulation No 883/2004.

31 It follows that the second condition referred to in paragraph 23 above is not satisfied.

32 Furthermore, given that that additional benefit does not cover any of the risks covered by the branches of social security referred to in Article 3(1) of Regulation No 883/2004, that it is not intended to provide solely specific protection for the disabled and that, in any event, it is not listed in Annex X to that regulation, it cannot be regarded as a special non-contributory cash benefit within the meaning of Article 70 of that regulation either.

33 Having regard to the foregoing, an additional benefit such as that at issue in the main proceedings does not fall within the scope of Regulation No 883/2004.

34 In those circumstances, there is no need to examine the question referred in the light of Article 34(1) and (2) of the Charter.

35 That being said, it should be borne in mind that, in the context of the procedure established by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. Moreover, the Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts. To that end, the Court may extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the legislation and the principles of EU law that require interpretation in view of the subject matter of the dispute in the main proceedings (judgment of 16 July 2015, *Abcur*, C-544/13 and C-545/13, EU:C:2015:481, paragraphs 33 and 34 and the case-law cited).

36 In the present case, although the referring court has formally questioned the Court only as to the interpretation of Regulation No 883/2004, it is appropriate, as has been suggested by the Commission, to examine whether Regulation No 492/2011, in particular Article 7(2) thereof, is to be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings.

37 As has been noted in paragraph 13 above, in response to a question put by the Court at the hearing, the Slovak Government explained that, at the time of the accession of the Slovak Republic and the Czech Republic to the European Union, UB was employed in a primary school and continued in that post until at least 2006.

38 Article 45(2) TFEU provides that freedom of movement for workers is to entail the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment (judgment of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 34 and the case-law cited).

39 In addition, Article 7(2) of Regulation No 492/2011 is the particular expression, in the specific area of the grant of social advantages, of the principle of equal treatment enshrined in Article 45(2) TFEU, and must be accorded the same interpretation as that provision (judgment of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 35 and the case-law cited).

40 According to Article 7(2) of Regulation No 492/2011, a worker who is a national of one Member State is to enjoy, in the territory of another Member State, the same social and tax advantages as national workers.

41 The Court has held that that provision equally benefits both migrant workers resident in a host Member State and frontier workers employed in that Member State while residing in another Member State (judgments of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 37, and of 10 July 2019, *Aubriet*, C-410/18, EU:C:2019:582, paragraph 24).

42 Similarly, the Court has held that a worker who was carrying on an activity as an employed person in his or her host Member State at the time of the accession of his or her Member State of origin to the European Union and has continued to carry on such activity after that accession may, from the date of accession, rely on Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ 1968 L 257, p. 2), the wording of which has been reproduced in Article 7(2) of Regulation No 492/2011, unless

the transitional arrangements provided for in the Act of Accession provide otherwise (see, to that effect, judgment of 27 September 1989, *Lopes da Veiga*, 9/88, EU:C:1989:346, paragraphs 9, 10 and 19).

43 In that regard, since the accession of the Slovak Republic and the Czech Republic to the European Union on 1 May 2004, freedom of movement for workers fully applies, in principle, to Czech nationals working in Slovakia, pursuant to Article 24 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33), and point 1.1 of Annex V thereto, subject only to the transitional provisions laid down in points 1.2 to 1.14 of that annex. As Article 7(2) of Regulation No 1612/68 is not covered by such transitional provisions, that provision applies with regard to those Czech nationals as from 1 May 2004 (see, by analogy, judgment of 27 September 1989, *Lopes da Veiga*, 9/88, EU:C:1989:346, paragraph 9).

44 Consequently, Article 7(2) of Regulation No 492/2011 also benefits a worker, such as UB, who, without having moved from his or her place of residence, is, because of the accession to the European Union of the State of which he or she is a national and the State in whose territory he or she is resident, in the same situation as a migrant worker.

45 It is therefore necessary to verify whether an additional benefit for sportspersons who have represented the State, such as that at issue in the main proceedings, is covered by the concept of a ‘social advantage’ for the purposes of Article 7(2) of Regulation No 492/2011.

46 In that regard, the reference made by that provision to ‘social ... advantages’ cannot be interpreted restrictively (see, to that effect, judgments of 30 September 1975, *Cristini*, 32/75, EU:C:1975:120, paragraph 12, and of 17 April 1986, *Reed*, 59/85, EU:C:1986:157, paragraph 25).

47 Indeed, the purpose of Article 7(2) of Regulation No 492/2011 is to achieve equal treatment, and therefore the concept of a ‘social advantage’, extended by that provision to workers who are nationals of other Member States, must include all advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Union (see, to that effect, judgments of 17 April 1986, *Reed*, 59/85, EU:C:1986:157, paragraph 26; of 12 May 1998, *Martínez Sala*, C-85/96, EU:C:1998:217, paragraph 25; and of 15 September 2005, *Ioannidis*, C-258/04, EU:C:2005:559, paragraph 35) and, consequently, their integration into the host Member State.

48 As the Court has already held, such advantages include, inter alia, an unemployment benefit aimed at young people who have just completed their studies and are seeking their first employment (see, to that effect, judgment of 15 September 2005, *Ioannidis*, C-258/04, EU:C:2005:559, paragraph 34), a child-raising allowance for a worker’s child (see, to that effect, judgment of 12 May 1998, *Martínez Sala*, C-85/96, EU:C:1998:217, paragraph 26), the possibility, for the widow and infant children of a migrant worker, of benefiting from the reductions in rail fares applicable to large families (see, to that effect, judgment of 30 September 1975, *Cristini*, 32/75, EU:C:1975:120, paragraph 13), the possibility, for an accused person who has worker status, of using one of the languages available to the residents of a municipality of the host Member State (see, to that effect, judgment of 11 July 1985, *Mutsch*, 137/84, EU:C:1985:335, paragraphs 16 and 17), or the possibility of obtaining permission for a worker’s unmarried partner, who is not a

national of the host Member State, to reside in that State with that worker (see, to that effect, judgment of 17 April 1986, *Reed*, 59/85, EU:C:1986:157, paragraph 28), because all those measures may contribute to the integration of the migrant worker into the host country and thus to achieving the objective of freedom of movement for workers.

49 In the same vein, it must be accepted that the possibility of a migrant worker being compensated in the same way as workers who are nationals of the host Member State for exceptional sporting results which he or she has obtained while representing that Member State or its legal predecessors may contribute to the integration of that worker into that Member State and thus to achieving the objective of freedom of movement for workers.

50 That interpretation cannot, contrary to the observations made by the Slovak Government at the hearing, be called in question by the judgments of 31 May 1979, *Even and ONPTS* (207/78, EU:C:1979:144) and of 16 September 2004, *Baldinger* (C-386/02, EU:C:2004:535).

51 It is true that, in those judgments, the Court held that benefits granted to veterans who are incapable of working due to an act of war or to former prisoners of war who can prove that they underwent a long period of captivity, in testimony of national gratitude for the hardships they endured, were not, inasmuch as they were paid as a quid pro quo for the service they rendered to their country, covered by the concept of a ‘social advantage’ for the purposes of Article 7(2) of Regulation No 1612/68, even though the persons requesting such benefits were migrant workers. Thus, those benefits did not contribute to the integration of those workers into the host Member State.

52 However, the purpose of the additional benefit at issue in the main proceedings is to compensate high-level sportspersons who have represented the host Member State or its legal predecessors in international sporting competitions and have obtained remarkable results. In particular, that additional benefit has the effect not only of providing its recipients with financial security intended, inter alia, to compensate for the fact that they were unable to fully integrate into the labour market during the years dedicated to practising a sport at a high level, but also, chiefly, of conferring on those recipients a particular level of social prestige because of the sporting results which they obtained in the context of that representation. The fact, for migrant workers, of benefiting from that level of prestige, which is also available to nationals of the host Member State who are in the same situation, or have even obtained medals as part of the same team in team sports competitions, is capable of facilitating the integration of those migrant workers into the society of that Member State. Moreover, the Court has previously recognised the considerable social importance of sport in the European Union, in particular amateur sport, as reflected in Article 165 TFEU, and the role of that sport as a factor for integration into the society of the host Member State (see, to that effect, judgment of 13 June 2019, *TopFit and Biffi*, C-22/18, EU:C:2019:497, paragraph 33).

53 It follows that an additional benefit such as that at issue in the main proceedings is covered by the concept of a ‘social advantage’ for the purposes of Article 7(2) of Regulation No 492/2011, so that a Member State which grants such a benefit to its national workers cannot refuse to grant it to workers who are nationals of other Member States without discriminating on the basis of nationality, which is forbidden by that provision.

54 Having regard to all of the foregoing, the answer to the question referred is that:

– Article 3(1)(d) of Regulation No 883/2004 must be interpreted as meaning that an additional benefit paid to certain high-level sportspersons who have represented a Member State or its legal

predecessors in international sporting competitions is not covered by the ‘old-age benefit’ referred to in that provision and, consequently, falls outside the scope of that regulation;

– Article 7(2) of Regulation No 492/2011 must be interpreted as precluding legislation of a Member State which makes receipt of an additional benefit introduced for certain high-level sportspersons who have represented that Member State or its legal predecessors in international sporting competitions conditional upon, in particular, the person applying for the benefit having the nationality of that Member State.

Costs

55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

1. Article 3(1)(d) 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 must be interpreted as meaning that an additional benefit paid to certain high-level sportspersons who have represented a Member State or its legal predecessors in international sporting competitions is not covered by the ‘old-age benefit’ referred to in that provision and, consequently, falls outside the scope of that regulation.

2. Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as precluding legislation of a Member State which makes receipt of an additional benefit introduced for certain high-level sportspersons who have represented that Member State or its legal predecessors in international sporting competitions conditional upon, in particular, the person applying for the benefit having the nationality of that Member State.

[Signatures]

* Language of the case: Slovak.