

Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

12 March 2020 (*)

(Reference for a preliminary ruling — Social security for migrant workers — Regulation (EC) No 883/2004 — Article 5(b) — Increase in the rate for old-age pensions — Taking into account of the allowance paid in respect of the raising of a disabled child in another Member State — Principle of equal treatment of facts)

In Case C-769/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 29 November 2018, received at the Court on 7 December 2018, in the proceedings

Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle

v

SJ,

Ministre chargé de la Sécurité sociale,

THE COURT (Eighth Chamber),

composed of L.S. Rossi (Rapporteur), President of the Chamber, J. Malenovský and F. Biltgen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 24 October 2019,

after considering the observations submitted on behalf of:

- the Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle, by J.-J. Gatineau, avocat,
- the French Government, by A.-L. Desjonquères, A. Daly, D. Colas, A. Ferrand and R. Coesme, acting as Agents,
- the Czech Government, by M. Smolek, J. Pavliš and J. Vlášil, acting as Agents,
- the German Government, by D. Klebs, acting as Agent,
- the European Commission, by C. Valero and B.-R. Killmann, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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, and corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43) ('Regulation No 883/2004').

2 The request has been made in the context of proceedings between the Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle (Pension Insurance and Occupational Health Fund of Alsace-Moselle, France) ('Carsat'), on the one hand, and SJ and the ministre chargé de la Sécurité sociale (Minister responsible for Social Security), on the other hand, concerning the taking into account, for the purposes of calculating SJ's pension, of the increase in career duration to which she may be entitled in respect of the raising of her disabled child.

Legal context

European Union law

3 Recitals 9 and 12 in the preamble to Regulation No 883/2004 state:

'(9) The Court of Justice has on several occasions given an opinion on the possibility of equal treatment of benefits, income and facts; this principle should be adopted explicitly and developed, while observing the substance and spirit of legal rulings.

...

(12) In the light of proportionality, care should be taken to ensure that the principle of assimilation of facts or events does not lead to objectively unjustified results or to the overlapping of benefits of the same kind for the same period.'

4 Article 1(z) of that regulation provides that, for the purposes of the latter, "family benefit" means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I.'

5 Article 3 of Regulation No 883/2004, entitled 'Matters covered', provides:

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

(a) sickness benefits;

...

(c) invalidity benefits;

(d) old-age benefits;

...

(j) family benefits.

...

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

...

5. This Regulation shall not apply to:

(a) social and medical assistance;

...'

6 Article 5 of the regulation, entitled 'Equal treatment of benefits, income, facts or events', is worded as follows:

'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 Article 9 of Regulation No 883/2004, entitled 'Declarations by the Member States on the scope of this Regulation', provides, in paragraph 1 thereof:

'The Member States shall notify the Commission of the European Communities ... [of] the legislation and schemes referred to in Article 3 ...'

8 Under Article 70(2) of that regulation:

'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.'

9 Annex X to that regulation is worded as follows:

'...

GERMANY

(a) Basic subsistence income for the elderly and for persons with reduced earning capacity under Chapter 4 of Book XII of the Social Code;

(b) Benefits to cover subsistence costs under the basic provision for jobseekers unless, with respect to these benefits, the eligibility requirements for a temporary supplement following receipt of unemployment benefit (Article 24(1) of Book II of the Social Code) are fulfilled.

...'

German law

10 Paragraph 35a of Book VIII of the Sozialgesetzbuch (German Social Code), in the version applicable to the facts at issue in the main proceedings, entitled 'Assistance for integration of mentally disabled children and young people', provides:

'(1) Children and young people with a mental disability or threatened by such a disability are entitled to assistance for integration. That assistance is available according to individual need:

1. on an outpatient basis,
2. in a crèche for young children or on a half-board basis in other settings;
3. by suitable personal care staff and
4. on the basis of board in a specialised facility or in other types of accommodation.

The purpose and objective of the assistance, the designation of the groups of persons and the types of measures are covered by Paragraphs 39(3) and 40 of the Federal law on social assistance and the duration of the application of these provisions to persons with mental disabilities or persons at risk of such disability are covered by the law implementing Paragraph 47.

(2) Where assistance for education is granted at the same time, the institutions, services and staff that are used for the fulfilment of the duties of the integration assistance should also be used to meet the educational needs. Therapeutic educational measures must be offered for children who have not yet reached school age and, if the care needs allow, use should be made of facilities catering for both children with disabilities and children without disabilities.'

French law

11 Article L. 351-4-1 of the code de la sécurité sociale (French Social Security Code) provides:

'Socially insured persons raising a child and entitled, pursuant to the first and second paragraphs of Article L. 541-1, to the child-rearing allowance for a disabled child and to any supplement

thereto or, instead of the latter, to the receipt of the compensation allowance provided for by Article L. 245-1 of the Social Action and Families Code, shall benefit, without prejudice, as the case may be, to Article L. 351-4, from an increase in their period of insurance by one quarter per period of child-rearing of thirty months, subject to a maximum of eight quarters.'

12 Article L. 541-1 of that code provides:

'Any person with responsibility for a disabled child is entitled to a child-rearing allowance for a disabled child, if the child's permanent disability is at least equivalent to the specified rate.

An additional allowance shall be granted in respect of a child with a disability if the nature or the severity of that disability requires high expenditure or regular help from a third party. The amount thereof shall vary according to the importance of the additional expenditure or the permanence of the required assistance.

...'

13 Article R. 541-1 of that code is worded as follows:

'In order for the first paragraph of Article L. 541-1 to apply, the degree of permanent incapacity which the disabled child must demonstrate in order to qualify for the child-rearing allowance for a disabled child shall be at least equal to 80%.

The degree of incapacity shall be assessed in accordance with the scale-guide annexed to Decree No 93-1216 of 4 November 1993 concerning the applicable scale-guide for the allocation of various services to disabled persons and amending the code de la famille et de l'aide sociale (Social Assistance and Family Code), the Social Security Code (part two: Decrees in the Conseil d'État (Council of State)), and Decree No 77-1549 of 31 December 1977.

...'

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

14 SJ is a French national, residing in Stuttgart (Germany), and mother to a disabled child born in 1981. Over the course of her professional career, she worked successively in France and Germany as a middle- and high-school teacher qualified to work in the French national education system.

15 From 10 November 1995, the City of Stuttgart paid SJ an amount in respect of assistance for the integration of mentally disabled children and young people, on the basis of Paragraph 35a, Book VIII, of the German Social Code ('the German assistance').

16 On 7 July 2010, SJ was granted retirement from the French national education system with effect from 1 August 2010. On 27 July 2010, she applied to the Deutsche Rentenversicherung Bund (federal pension insurance body, Germany) for payment of her pension, which sent that request to Carsat. The latter body awarded her a retirement pension, with effect from 1 November 2011.

17 On 18 March 2012, SJ submitted a complaint to the commission de recours amiable de la Carsat (Carsat appeals board) concerning (i) the effective date of her pension and (ii) the failure to take into account, for the purposes of determining the number of periods of contribution and periods treated as such for the calculation of the amount of that pension, of the increase in the insurance period by one quarter per 30-month period of child-rearing up to a maximum of eight quarters, provided for in Article L. 351-4-1 of the French Social Security Code, for which socially

insured persons qualify where they raise a child and are entitled to the child-rearing allowance for a disabled child and to any supplement thereto, pursuant to Article L. 541-1 of that code ('increase in the pension rate'). Since that complaint was rejected, SJ appealed to the French Social Security Court.

18 By judgment of 8 April 2015, the tribunal des affaires de sécurité sociale de Strasbourg (Social Security Court, Strasbourg, France) dismissed SJ's applications. The cour d'appel de Colmar (Court of Appeal of Colmar, France), before which SJ brought an appeal, upheld, by judgment of 27 April 2017, the decision of the lower court in so far as concerns the effective date of the retirement pension awarded by Carsat. It overturned the same decision as regards the amount of that pension, holding that the increase in the pension rate provided for under French law was to be taken into account.

19 Thus, basing its judgment on Article 5 of Regulation No 883/2004, the Court of Appeal of Colmar found that the German assistance was equivalent to the child-rearing allowance for a disabled child provided for in Article L. 541-1 of the French Social Security Code ('the French allowance'), with the effect that SJ was entitled to the increase in the pension rate. The appeal court thereby inferred that the rate applicable to SJ's retirement pension was to be increased by an amount corresponding to eight quarters of career owing to the raising of her disabled child.

20 Carsat brought an appeal before the Cour de cassation (Court of Cassation, France) against that judgment, in support of which it submitted that the Court of Appeal of Colmar had infringed Article 5 of Regulation No 883/2004 as well as Articles L. 351-4-14 and L. 541-1 of the French Social Security Code, by holding that the German assistance and the French allowance were equivalent without ascertaining beforehand whether SJ's disabled child was affected by a permanent incapacity of at least 80%, thereby qualifying for the increase in the pension rate. It maintains that, by that ruling, the judgment on appeal could, in essence, give rise to reverse discrimination against insured persons who have been subject to the French system only compared with those who have been subject to the benefit systems of other Member States.

21 In that connection, the referring court points out that the French allowance comes — as a family benefit under one of the categories of the French social security system — within the material scope of Regulation No 883/2004, whereas the German allowance appears to fall within the scope of social support and assistance, for the purposes of Article 3(5)(a) of that regulation, and is therefore outside the latter regulation's scope. Furthermore, that allowance is not set out in the declaration notified by the German Government pursuant to Article 9 of the regulation, concerning German legislation coming within the scope thereof.

22 In that context, the Court of Cassation, which entertains doubts as to the possibility of applying Regulation No 883/2004 to the facts of the case in the main proceedings and the equivalent nature of the French allowance and the German assistance, decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the [German assistance] fall within the material scope of Regulation No 883/2004?

(2) If it does, are the [French allowance], on the one hand, and the [German assistance], on the other hand, of an equivalent nature within the meaning of Article 5(a) of Regulation No 883/2004, having regard to the purpose of Article L. 351-4-1 of the French Social Security Code aimed at the taking into account of the costs inherent in raising a child with a disability for the purposes of the determination of the insurance period providing entitlement to a retirement pension?'

Consideration of the questions referred

The first question

23 By its first question, the referring court asks, in essence, whether Article 3 of Regulation No 883/2004 must be interpreted as meaning that the German assistance constitutes a benefit within the meaning of Article 3 and accordingly falls within the material scope of that regulation.

24 In order to answer the question referred, it is necessary, in the first place, to determine whether that assistance constitutes a social security benefit, for the purposes of Article 3(1) of that regulation.

25 In that connection, it should be observed, as a preliminary point, that it is clear from the information before the Court that the Federal Republic of Germany did not declare that the federal law governing the German assistance is within the scope of the regulation. However, the Court has previously held that the fact that a Member State has failed, contrary to the requirements of Article 9 of Regulation No 883/2004, to declare that a given law is covered by that regulation does not automatically mean that the law is outside the material scope of the regulation (see, to that effect, judgment of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraph 30).

26 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 14 March 2019, *Dreyer*, C-372/18, EU:C:2019:206, paragraph 31 and the case-law cited).

27 Thus, a benefit may be regarded as a 'social security benefit' when two conditions are satisfied, namely (i) in so far as it is granted to recipients, without any individual and discretionary assessment of their personal needs, on the basis of a legally defined position and (ii) provided that it relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004 (judgment of 14 March 2019, *Dreyer*, C-372/18, EU:C:2019:206, paragraph 32 and the case-law cited). Given that the two conditions 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).

28 It should be recalled that the first condition is satisfied when a benefit is granted in the light of objective criteria which, if met, confer entitlement to the benefit, the competent authority having no power to take account of other personal circumstances. In that regard, the Court has held, in relation to benefits which are granted, refused or the amount of which is calculated by taking into account the recipient's resources, that the grant of such benefits does not depend on an individual assessment of the applicant's personal needs, provided that an objective, legally defined criterion gives entitlement to the benefit without the competent authority being able to take other personal circumstances into consideration (judgment of 14 March 2019, *Dreyer*, C-372/18, EU:C:2019:206, paragraphs 33 and 34 and the case-law cited).

29 The Court has also stated that, in order for it to be considered that the first condition has not been satisfied, the discretionary nature of the assessment, by the competent authority, of the personal needs of a recipient of a benefit must, above all, relate to eligibility for that benefit. Those considerations apply, *mutatis mutandis*, in respect of the individual character of the assessment by the competent authority of the personal needs of a recipient of a benefit (see, to that effect, judgment of 14 March 2019, *Dreyer*, C-372/18, EU:C:2019:206, paragraph 35 and the case-law cited).

30 In the present case, it is clear from the information before the Court that the grant of the German assistance is not subject to objective criteria such as, inter alia, a specific rate or level of incapacity or disability.

31 Furthermore, it is common ground that, in accordance with the wording itself of Paragraph 35a of the Social Code, that assistance is available according to the individual needs of the child beneficiary, on the basis of an individual and discretionary assessment of those needs by the competent authority.

32 In those circumstances, it must be held that the German assistance does not satisfy the first condition set out in paragraph 27 of the present judgment.

33 Consequently, having regard to the case-law recalled in paragraph 27, that assistance does not constitute a social security benefit within the meaning of Article 3(1) of Regulation No 833/2004.

34 However, it must be borne in mind that Article 3(3) of that regulation extends the scope of that regulation to special non-contributory cash benefits referred to in Article 70. In those circumstances, it is appropriate, in the second place, to determine whether the German assistance constitutes such a benefit.

35 In that connection, it is sufficient to note that it is clear from the wording of Article 70(2)(c) of Regulation No 883/2004 that the special non-contributory cash benefits are to be understood as solely those listed in Annex X to that regulation. Since the German assistance does not appear in that annex, it does not constitute such a benefit.

36 It follows from the foregoing considerations that the answer to the first question is that Article 3 of Regulation No 883/2004 must be interpreted as meaning the German assistance does not constitute a benefit within the meaning of Article 3 and, therefore, does not fall within the material scope of that regulation.

The second question

37 By its second question, the referring court asks, in essence, if the answer to the first question is in the affirmative, whether Article 5(a) of Regulation No 883/2004 must be interpreted as meaning that the French allowance and the German assistance may be considered to be equivalent benefits, within the meaning of that provision.

38 As a preliminary point, it should be observed that, in accordance with the case-law of the Court, Article 5(a) of that regulation is intended to apply only to benefits falling within the scope of that regulation (judgment of 21 January 2016, *Vorarlberger Gebietskrankenkasse and Knauer*, C?453/14, EU:C:2016:37, paragraph 32). It has been held in paragraph 36 of the present judgment that the German assistance does not constitute a benefit within the meaning of Article 3 of Regulation No 883/2004 and, accordingly, does not fall within the material scope thereof. Consequently, Article 5(a) of the regulation does not apply to the facts of the case in the main proceedings.

39 Nonetheless, in the procedure laid down 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. 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 (judgment of 13 June 2019, *Moro*, C-646/17, EU:C:2019:489, paragraph 39 and the case-law cited).

40 Consequently, even if, formally, the referring court has limited its questions to the interpretation of certain provisions of EU law, that does not prevent this Court from providing the referring court with all the elements of interpretation of EU law that may be of assistance in adjudicating in the case before it, whether or not the referring court has referred to them in the wording of its questions. It is, in that regard, for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings (judgment of 13 June 2019, *Moro*, C-414/17, EU:C:2019:489, paragraph 40 and the case-law cited).

41 In the present case, the dispute in the main proceedings concerns the question whether, for the purposes of determining whether a person is entitled to the increase in the pension rate provided for by the French legislation, the circumstances that gave rise to the grant of the German assistance — namely assistance obtained by that person, as a migrant worker, on the basis of the legislation of the host Member State — must be taken into account.

42 It should be pointed out, in that regard, that Article 5 of Regulation No 883/2004, read in the light of recital 9 thereof, enshrines the case-law principle of equal treatment of benefits, income and facts that the EU legislature sought to include in the text of that regulation in order that that principle might be developed in keeping with the substance and spirit of the Court's rulings (see, to that effect, judgment of 5 December 2019, *Bocero Torrico and Bode*, C-398/18 and C-428/18, EU:C:2019:1050, paragraph 29 and the case-law cited).

43 It is in that context that Article 5(b) of Regulation No 833/2004 provides that where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State is to take account of like facts or events occurring in any Member State as though they had taken place in its own territory.

44 It follows that, in order to provide the referring court with a meaningful answer allowing it to decide the dispute before it, the second question must be understood as seeking to know whether the principle of equal treatment of facts, enshrined in Article 5(b) of Regulation No 883/2004, as a particular expression of the general principle of non-discrimination, applies in circumstances such as those at issue in the main proceedings.

45 In that connection, in order to determine whether that principle applies in the present case, it must be ascertained whether two conditions are met, namely whether (i) the increase in the pension rate, provided for in Article L. 351-4-1 of the French Social Security Code, falls within the scope of Regulation No 883/2004, and (ii) the latter national provision attributes legal effects to the occurrence of certain facts or events, for the purposes of Article 5(b) of that regulation.

46 As regards the first of those conditions, it should be noted that, in the light of the case-law cited in paragraph 27 of the present judgment, the increase in the pension rate can fall within the material scope of that regulation, as an old-age benefit, within the meaning of Article 3(1)(d) of that regulation.

47 First, that increase is granted to beneficiaries without any individual and discretionary assessment of their personal needs, on the basis of a legally defined situation, namely that they have raised a child justifying the French allowance.

48 Secondly, as the Commission noted in essence in its written observations, the benefit at

issue in the main proceedings seeks to compensate for disadvantages in terms of career that may have been suffered by persons who have raised a severely disabled child, by granting an increase in the contribution periods that is proportionate to the period spent raising the disabled child, which is then reflected in an increase in the pension amount paid to such persons. Accordingly, that benefit, in so far as it is intended to safeguard the means of subsistence of persons who, when they reach a certain age, leave their employment and are no longer required to hold themselves available for work at the employment office, relates to the risk covered by old-age benefits, within the meaning of Article 3(1)(d) of Regulation No 883/2004 (see, to that effect, judgment of 16 September 2015, *Commission v Slovakia*, C?361/13, EU:C:2015:601, paragraph 55 and the case-law cited).

49 As regards the second of the conditions set out in paragraph 45 of the present judgment, it should be noted that, for the purposes of granting the increase in the pension rate, Article L. 351-4-1 of the French Social Security Code does not require that the French allowance be obtained beforehand, but rather that the conditions justifying such an allowance, laid down by Article L. 541-1 of that code, are met. In particular, in accordance with the latter provision, in order that insured persons raising a disabled child may benefit from such an increase, the child's permanent incapacity must be at least equal to a specific rate, set by Article R. 541-1 of that code at 80%.

50 Thus the increase in the pension rate is attributed on the basis of the occurrence of a fact, within the meaning of Article 5(b) of Regulation No 883/2004, namely that the child's permanent incapacity must be at least equal to a certain level. Accordingly, the second condition is also met in the present case.

51 It follows that the principle of equal treatment of facts, enshrined in the aforementioned Article 5(b), applies in circumstances such as those of the case in the main proceedings.

52 In so far as concerns the rules for the application of that principle, it is for the competent French authorities to ascertain whether, in the present case, it is established that the fact required has occurred, for the purposes of Article 5(b) of Regulation No 883/2004.

53 In that connection, the competent French authorities must take into account similar facts occurring in Germany, and cannot confine themselves, in assessing the permanent incapacity of the disabled child concerned, solely to the criteria laid down to that end by the scale-guide applicable in France under Article R. 541-1 of the French Social Security Code.

54 Consequently, in order to determine whether the level of the child's permanent incapacity required by that code to justify the increase in the pension rate has been met, those authorities cannot refuse to take into account similar facts occurring in Germany which can be established by any evidence, and in particular by medical reports, certificates or even prescriptions for treatment or medicines.

55 It should be added that, in the context of such checks, those authorities must also observe the principle of proportionality by ensuring, *inter alia*, that the principle of equal treatment of facts does not give rise to objectively unjustified results, in accordance with recital 12 of Regulation No 883/2004.

56 In the light of the foregoing considerations, the answer to the second question is that Article 5 of Regulation No 883/2004 must be interpreted as meaning that:

– the French allowance and the German assistance cannot be considered to be benefits of an equivalent nature, for the purposes of Article 5(a);

– the principle of equal treatment of facts enshrined in Article 5(b) applies in circumstances such as those at issue in the main proceedings. It is therefore for the competent French authorities to ascertain whether, in the present case, it is established that the fact required for the purposes of that provision has occurred. In that connection, those authorities must take into account similar facts occurring in Germany as though they had taken place on their own territory.

Costs

57 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 (Eighth Chamber) hereby rules:

1. Article 3 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, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, must be interpreted as meaning that the assistance for integration of mentally disabled children and young people, provided for in Paragraph 35a of Book VIII, of the Sozialgesetzbuch (German Social Code), does not constitute a benefit within the meaning of Article 3 and, therefore, does not fall within the material scope of that regulation.

2. Article 5 of Regulation No 883/2004, as amended by Regulation No 988/2009, must be interpreted as meaning that:

– **the child-rearing allowance for a disabled child, provided for in Article L. 541-1 of the Code de la sécurité sociale (French Social Security Code), and the assistance for integration of mentally disabled children and young people, provided for in Paragraph 35a of Book VIII of the German Social Code, cannot be considered to be benefits of an equivalent nature, for the purposes of Article 5(a);**

– **the principle of equal treatment of facts enshrined in Article 5(b) applies in circumstances such as those at issue in the main proceedings. It is therefore for the competent French authorities to ascertain whether, in the present case, it is established that the fact required for the purposes of that provision has occurred. In that connection, those authorities must take into account similar facts occurring in Germany as though they had taken place on their own territory.**

[Signatures]

* Language of the case: French.