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In case no. 1487-22, the **Swedish Social Insurance Agency** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 21 December 2023.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court grants the appeal in part, overturns the rulings of the administrative court and administrative court of appeal, and remands the case to the administrative court for continued examination in accordance with what is stated in paragraph 19.

BACKGROUND

1. Parental allowance is a social insurance benefit which is provided for care of children. Parental allowance relating to the birth of a child is provided for not more than 480 days in total for the parents.
2. In the event a parent has, pursuant to foreign legislation, received a benefit comparable to parental allowance relating to the birth of a child, the maximum number of days with parental allowance is reduced taking into account the time for which the foreign benefit was provided.
3. AA applied for parental allowance for a certain period of time for the care of his son. The Swedish Social Insurance Agency decided to deduct 319 days from the number of days with parental allowance for the child. The reason for this was that the other parent had received maternity and parental allowance from Finland. According to the Swedish Social Insurance Agency, the Finnish benefits were comparable to Swedish parental allowance.
4. AA appealed the decision to the Administrative Court in Stockholm. The administrative court stated that the Finnish benefits in the application of the EU

law regime within the area have been ascribed to a category of benefits other than the Swedish parental allowance. According to the court, this meant that the Finnish benefits are not such benefits pursuant to foreign legislation as are comparable to Swedish parental allowance, and the number of days with parental allowance should accordingly not be reduced. The court thus overturned the decision of the Swedish Social Insurance Agency and remanded the case to the authority for calculation of AA's parental allowance days.

5. The Swedish Social Insurance Agency appealed the judgment of the administrative court to the Administrative Court of Appeal in Stockholm which concurred in the judgment of the administrative court and rejected the appeal.

CLAIMS, ETC.

6. *The Swedish Social Insurance Agency* claims that the Supreme Administrative Court shall overturn the rulings of the courts and uphold the decision of the Swedish Social Insurance Agency.
7. AA has been provided the opportunity to comment but has not done so.

REASONS FOR THE RULING

The question in the case

8. The question in the case is whether certain benefits which a parent has received pursuant to foreign legislation are comparable to parental allowance relating to the birth of a child.

Legislation, etc.

9. According to Chapter 12, section 12, first paragraph of the Social Insurance Code parental allowance relating to the birth of a child is provided for not more than 480 days in aggregate for the parents.
10. Section 33, first paragraph states that where a parent has received a benefit pursuant to foreign legislation comparable to parental allowance relating to the birth of a child, the period of time for which the foreign benefit has been provided shall be deducted from the maximum number of days parental allowance can be provided pursuant to section 12.
11. The following is stated in the preparatory works. In order to avoid the provision of full parental allowance benefits from two or more countries for the care of the same child, it should be possible to deduct periods during which benefits have been provided for a child pursuant to the legislation of another country in conjunction with the grant of comparable benefits for such child pursuant to Swedish legislation, i.e. a form of aggregation at the expense of the insured in question in respect of the longest period of time during which a benefit may be provided. A deduction shall be made not only for the benefits which have been provided pursuant to a country's social insurance legislation, but also when an employer has a statutory duty to pay wages or other compensation in conjunction with parental leave. The maximum number of days for which parental allowance may be provided in aggregate to the parent shall be reduced by the compensation days provided for the child pursuant to the foreign legislation. The deduction shall be made irrespective of which of the parents has received the compensation. Days for which one parent has received compensation pursuant to the legislation of another country may thus be deducted from days with parental allowance which the other parent desires to claim (Government Bill 1994/95:197, pp. 17 ff. and 25 f.).

The Court's assessment

12. There is an EU law regime in the area of social insurance in the form of, *inter alia*, Regulation (EC) No 883/2004 on the coordination of social security systems. The regulation is intended to coordinate, but not harmonise, the social insurance legislation of the Member States.
13. In the regulation, the social insurance benefits are divided into different covered matters. The Swedish parental allowance benefit belongs to the “family benefits” covered matter, while the Finnish maternity and parental allowance benefits belong to the “maternity and equivalent paternity benefits” covered matter. The benefits thus belong to different covered matters and there are no coordination provisions in the regulation which are applicable to the situation in the case.
14. The administrative court and the administrative court of appeal have been of the opinion that the fact that the benefits belong to different covered matters in the EU regulation also entail that the Finnish benefits may not be deemed to be such benefits pursuant to foreign legislation as correspond to Swedish parental allowance pursuant to Chapter 12, section 33 of the Swedish Social Insurance Code. The courts justified this by the fact that, since the benefits do not belong to the same covered matters, they do not have the same purpose and thus are not of the same kind.
15. The Supreme Administrative Court notes that the deduction provision in Chapter 12, section 33 is not intended to adapt Swedish law to Union law but, rather, is a purely national provision which may be applied in respect of benefits from any other country. Neither the wording of the provision nor the statements made in the preparatory works support the notion that the EU law classification is decisive as to whether a foreign benefit may be deemed to be comparable to Swedish parental allowance as regards benefits which are provided from another Member State.
16. In the view of the Supreme Administrative Court, the question regarding whether a foreign benefit is comparable to Swedish parental allowance, even as regards

benefits from other Member States, must be determined on the basis of an overall assessment of the similarities and differences between the foreign benefit and the Swedish parental allowance.

17. It is apparent from the investigation in the case that the Finnish benefits, in the same manner as the Swedish parental allowance, are intended to provide the parents with the possibility to be home and take care of their child by compensating the loss of income entailed thereby. The Finnish benefits, furthermore, are framed in a similar manner as the Swedish parental allowance. Accordingly, they may be deemed to constitute such benefits pursuant to foreign legislation which, pursuant to Chapter 12, section 33 of the Social Insurance Code, are comparable to parental allowance relating to the birth of a child.
 18. The maximum number of days with parental allowance for AA's son is thus to be reduced taking into account the period of time for which the other parent received maternity and parental allowance in Finland.
 19. The Swedish Social Insurance Agency has deducted 319 days from the number of days with parental allowance for the child. In the appeal to the administrative court, AA claimed that the decision of the Swedish Social Insurance Agency was to be amended such that only 263 days were to be deducted, with the justification that that was the number of days for which the other parent had received compensation in Finland. Based on the assessment of the administrative court that the Finnish benefits do not correspond to Swedish parental allowance, the court did not have reason to determine whether the calculation made by the Swedish Social Insurance Agency of the number of days is correct. Accordingly, the case shall be remanded to the administrative court for examination of that question.
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Justices Helena Jäderblom, Kristina Ståhl, Inga-Lill Askersjö, Mats Anderson and Martin Nilsson have participated in the ruling.

Judge Referee: Hannah Ivarsson.