JUDGMENT OF THE COURT
OF 27 NOVEMBER 1973 [1]

Magdalena Vandeweghe and others v Berufsgenossenschaft für die chemische Industrie (preliminary ruling requested by the Landessozialgericht Baden-Württemberg)

Case 130/73

Summary

1. *Preliminary ruling — Jurisdiction of the Court — Limits (Article 177, EEC Treaty)*

2. *Social security of migrant workers — Death grant — Pension — Different meanings (Regulation No 1408/71 of the Council, Article 1)*

3. *Social security of migrant workers — Widow — Re-marriage — Settlement grant — Meaning — Treated as a pension (Regulation No 1408/71 of the Council, Article 1)*

1. The Court has no jurisdiction under Article 177 of the EEC Treaty to give a ruling on the interpretation of provisions of international law which bind Member States outside the framework of Community law.

2. Death grant is not covered by the expression 'pension'.

3. The settlement grant to be paid to a widow in the event of remarriage must be regarded as in lieu of the widow's pension and must be treated as a pension.

In Case 130/73

Reference to the Court under Article 177 of the EEC Treaty by the Landessozialgericht Baden-Württemberg for a preliminary ruling in the action pending before that court between

1. MAGDALENA VANDEWEGHE, widow,

2. SOLANGE VERHELLE,
both resident at Ingelmunster, Belgium,

1 — Language of the Case: German.

3. MINISTRY FOR PUBLIC HEALTH AND FAMILY, Brussels,

and

BERUFSGENOSSENSCHAFT FÜR DIE CHEMISCHE INDUSTRIE, Heidelberg,

on the interpretation of Article 2 of the Supplementary Agreement No 3 of 7 December 1957 to the General Convention on Social Security between the Federal Republic of Germany and the Kingdom of Belgium,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen (Rapporteur), Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore and C. Ó Dálaigh, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

The facts of the case, the subject matter of the request and the views of the parties are set out as follows in the report for the hearing:

I — Facts and procedure

1. The first plaintiff is the widow, the second plaintiff the daughter of a Belgian national killed in an air-raid on Germany on 24 April 1945. The defendant in the main action recognized the death as an accident in the course of employment and in March 1968 allowed the first plaintiff a widow's pension for the period from 24 April 1945 to June 1946 inclusive, since on 5 June 1946 she had remarried. The second plaintiff received an orphan's pension from 24 April 1945 to May 1952 inclusive, since on 8 May 1952 she attained 18 years of age.

The plaintiffs have claimed in addition the payment of death grant (Article 589) (1) (1) of the 'Reichsversicherungsordnung') and widows' settlement grant, payable to the widow in the event of remarriage, (Article 615 (1) of the 'Reichsversicherungsordnung') from the defendant association.

The defendant rejected these claims on the ground that these benefits were not referred to in the Supplementary Agreement No 3 of 7 December 1957 to the General Convention on Social Security between the Federal Republic of Germany and the Kingdom of Belgium concerning the payment of pensions for the period before the Convention came into force.

The point at issue between the parties in the main action is whether these rights are included in Article 2 of the Supplementary Agreement No 3, since this provision relates only to the payment of arrears of 'pensions or part of pensions' (in the French text: 'prestations ou fractions de prestations'). The Sozialgericht Mannheim decided on 5 May 1970 that claims to death grant and widow's settlement grant did not come within the term 'pensions or part pensions'.

On the plaintiffs' appeal the Landessozialgericht Baden-Württemberg stayed the proceedings and referred the following question to the Court for a preliminary ruling in accordance with Article 177 of the EEC Treaty:

'Does Article 2 of the Supplementary Agreement No 3 of 7 December 1957 to the General Convention on Social Security between the Federal Republic of Germany and the Kingdom of Belgium relating to the payment of pensions for the period before the Convention came into force, which governs the payment of pensions or part of pensions, cover also claims to death grant and widow's settlement grant?'

In the grounds of the order of reference the Landessozialgericht stated that it has referred the above question to the Court because the following three points appear to it to need clarification with regard to the view taken by the Sozialgericht and the defendant:

1. It is not clear what comes under the term 'part of pensions'. Should a part of a pension be understood, that is a pension paid for a certain period, or should this term have a wider meaning?

2. In the French text of the Supplementary Agreement No 3 'prestations ou fractions des prestations' are referred to. The word 'prestation' should be translated by 'benefit'. However the term 'benefit' covers more than pure pensions and it would if there were any doubt cover claims to death grant and widows' settlement grant.

3. Finally it appears that both EEC Regulation No 3 — since repealed — and Regulation (EEC) No 1408/71 provide a uniform definition of the terms 'benefit' and 'pension'. This could mean that there is no difference between the terms pension and benefit under EEC Law and that the term pension — departing from the German terminology — should cover all benefits under social law.

2. The order of the Landessozialgericht was registered at the Court on 30 April 1973.

The Commission by its agent P. Karpenstein submitted its written observations in accordance with the provisions of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to proceed without a preparatory inquiry.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The Commission recalls that the EEC Treaty does not give the Court jurisdiction to interpret bilateral conventions as the Landessozialgericht is seeking in the case in question by

invoking Article 177 of the Treaty. In so far as it refers to Article 2 of the Supplementary Agreement No 3, the request, in the view of the Commission, is therefore inadmissible.

However, the Commission also recalls that in the grounds of the order of reference the court has included among the points requiring clarification the meaning of the related concepts 'benefit' and 'pension' used in EEC Regulations Nos 3 and 1408/71. The Commission would have no fundamental objection if this observation in the order of reference were included as an additional question submitted to the Court, seeking to ascertain whether the related concepts 'benefit' and 'pension' used in Regulations Nos 3 and 1408/71 also include such rights as those giving rise to the main action.

The Commission states that one of the reasons for thus interpreting the order of reference is that, according to paragraph 1 of the 'General Comments' of Annex II to Regulation No 1408/71, references made, by a social security convention remaining applicable, to conventions not mentioned in Annex II, and consequently displaced by the Community rules, have been replaced by references to the corresponding provisions of Community law.

The result of this provision is, *inter alia*, that the definitions given in Article 1 (12) ('prestations', 'pension' or 'rente' — 'benefit' or 'pension') of the General Convention made between Germany and Belgium must no longer be understood only in the sense of the bilateral Convention, but also in accordance with the provisions of Community law. The General Convention is not contained in Annex II, but the Supplementary Agreement No 3, Article 1 of which refers to the definitions in the General Convention, is so contained.

In consequence the Commission adopts a position on the question of how the terms 'benefits' and 'pensions' must be understood under Community law.

The Commission states that the terms 'benefit' and 'pension' are basically defined in the same way in EEC Regulations Nos 3 and 1408/71.

In wording roughly the same as that of Article 1 (s) of Regulation No 3, Article 1 (t) of Regulation No 1408/71 defines these terms as

'all benefits and pensions, including all elements thereof payable out of public funds, revalorisation increases and supplementary allowances, subject to provisions of Title III, as also lump-sum benefits which may be paid in lieu of pensions, and payments made by way of reimbursement of contributions.'

The Commission points out that from the provisions referred to, it appears that Community law understands the term pension in a wide sense and that it includes in particular capital payments which can be made in place of a pension.

The settlement grant to be paid to the widow in case of remarriage is a capital benefit of such a nature that, from the point of view of Community law, this grant is covered without any doubt in the term pension.

The Commission maintains moreover that the wording of the provisions covers both the case where capital benefits are substituted for pension rights and the case where capital benefits are granted for pensions which are extinguished.

In the Commission's opinion the result is different as regards death grant. Both in Regulation No 3 Article 1 (t) and in Regulation No 1408/71 Article 1 (v) it is strictly separate from pensions in the definitions. It is a question in the circumstances of once-for-all payments in the event of death, i.e. a grant of a non-recurring character. Moreover, it follows from the provisions of Articles 32 of Regulation No 3 and 64 to 66 of Regulation No 1408/71 that Community law provides different rules for the various kinds of pensions and for once-for-all payments such as death grant. As a result, Community law does

not permit, in the Commission's opinion, a single payment in the event of death, such as death grant, to be included in the term 'pensions or part of pensions'.

The Commission presented oral argument at the hearing on 24 October 1973.

The Advocate-General delivered his opinion at the hearing on 14 November 1973.

Grounds of judgment

1 By order dated 26 April 1973, filed at the Registry on 30 April 1973, the Landessozialgericht Baden-Württemberg referred to the Court for a preliminary ruling the question of the interpretation of Article 2 of the Supplementary Agreement to No 3 to the General Convention on Social Security between the Kingdom of Belgium and the Federal Republic of Germany.

Jurisdiction

2 The Court has no jurisdiction under Article 177 of the EEC Treaty to give a ruling on the interpretation of provisions of international law which bind Member States outside the framework of Community law.

The Court thus has no jurisdiction to give a ruling on the questions of interpretation which are raised by Article 2 of the Supplementary Agreement No 3 between Belgium and Germany owing to the fact, in particular, that the French and Dutch texts use the expressions 'prestations ou fractions de prestations' and 'uitkeringen of gedeelten van uitkeringen' as equivalent to the German expression 'Renten oder Rententeile', whilst this latter is translated elsewhere in the Agreement by the expressions 'pensions et rentes' and 'pensioenen en renten'.

3 However, it appears from the order of reference that the Landessozialgericht considers that the meaning of corresponding expressions of Community regulations concerning social security of workers could have relevance to the interpretation of the Agreement.

This could be all the more so since Annex II to Regulation No 1408/71 of 14 June 1971 provides that the Supplementary Agreement continues to apply without being replaced by the provisions of the Regulation and that references to the provisions of other conventions contained in Annex II, such as the

General Convention on Social Security between the Federal Republic of Germany and the Kingdom of Belgium of 7 December 1957, shall be replaced by references to the corresponding provisions of the Regulation.

The definitions given in Article 1 (12) ('prestation'), 'pension' and 'rente') of the General Convention to which Article 1 of the Supplementary Agreement No 3 refers, are thus replaced by the corresponding provisions of the Regulation.

This situation is, moreover, analogous to that which arose under Annex D of Regulation No 3 of 25 September 1958.

4 The question raised being capable of being understood as concerning the interpretation of Community provisions, the Court has jurisdiction to give a ruling.

On the substance

5 It is asked in the first place whether the expression 'pension' also refers to death grant such as that provided for by Article 589 (1) (1) of the Reichsversicherungordnung.

6 Article 1 of Regulation No 1408/71 clearly distinguishes 'death grant' on the one hand from 'benefits' and 'pensions' on the other hand.

Article 1 (v) defines 'death grant' as meaning any once-for-all payment in the event of death, exclusive of the lump-sum benefits which may be paid in lieu of pensions.

It appears, moreover, from Title 3, Chapter 5, headed 'Death grants', that they are subject to different rules from those provided for pensions.

7 The appropriate answer is thus that death grants are not included in 'pension'

8 It is further asked whether the settlement grant to be paid to the widow in the event of remarriage, such as that provided under Article 615 RVO, is covered by the word 'pension'.

Article 1 (t) of Regulation No 1408/71 provides that 'benefits' and 'pensions' mean all benefits and pensions'... as also lump-sum benefits which may be paid in lieu of pensions...'

The question is thus whether the settlement grant to be paid to the widow in the event of remarriage is a lump-sum benefit paid in lieu of a pension.

It is proper to regard the aim and object of such a settlement grant as being on the one hand not to discourage widows from remarrying by the loss of their right to a widow's pension in the event of remarriage and on the other hand to lighten the obligations of the institution liable for the payments by providing for the payment of a lump-sum in lieu of periodical payments which could last for a long time.

9 It follows that such a settlement grant must be regarded as in lieu of a widow's pension and must thus be treated as a pension.

Costs

10 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as parties to the main action are concerned, in the nature of a step in the action pending before a national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 3 of the Council concerning social security for migrant workers, especially Annex D;
Having regard to Regulation No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community, especially Article 1 (t) and (v), Title III, Chapter 5 and Annex II;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the question referred to it by the Landessozialgericht Baden-Württemberg by order of that Court dated 26 April 1973, hereby rules:

The provisions of Regulation No 1408/71 must be interpreted as meaning that the expression 'pension' includes the settlement grant to be paid to a widow in the event of remarriage, but not a death grant.

Lecourt Donner Sørensen

Monaco Mertens de Wilmars Pescatore Ó Dálaigh

Delivered in open court in Luxembourg on 27 November 1973.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 14 NOVEMBER 1973 [1]

Mr President,
Members of the Court,

Mrs Vandeweghe, appellant before the Baden-Württemberg Landessozialgericht, claims payment from the German Insurance Association of a death grant and a once-for-all widow's settlement grant provided by the national social legislation in the event of a widow's remarriage. The appellant, who resides in Belgium, is the widow of a Belgian national whose death occurred in 1945 in Germany in circumstances regarded as equivalent to an accident at work. Before her second marriage in 1946 she

1 — Translated from the Italian.