JUDGMENT OF THE COURT
20 October 1993 *

In Case C-297/92,

REFERENCE to the Court under Article 177 of the EEC Treaty from the Corte Suprema di Cassazione (Italy) for a preliminary ruling in the proceedings pending before that court between

Istituto Nazionale della Previdenza Sociale (INPS)

and

Corradina Baglieri,

on the interpretation of Article 9(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as consolidated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida and D. A. O. Edward (Presidents of Chambers), R. Joliet, F. A. Schockweiler, F. Grévisse, M. Zuleeg and J. L. Murray, Judges,

Advocate General: F. G. Jacobs,
Registrar: J.-G. Giraud,

after considering the written observations submitted on behalf of:

* Language of the case: Italian.

— the appellant in the main proceedings, by Carlo De Angelis, of the Rome Bar,

— the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, and Antonio Aresu, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 9 June 1993,

gives the following

Judgment

1 By order of 12 July 1991, which was received by the Court on 6 July 1992, the Corte Suprema di Cassazione (Court of Cassation) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 9(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as consolidated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6).

2 The question was rejected in proceedings between Corradina Baglieri and Istituto Nazionale della Previdenza Sociale (National Social Security Institution, 'INPS').

3 Mrs Baglieri, an Italian national, worked in the Federal Republic of Germany from 23 August 1965 to 4 April 1975. She then returned to Italy. On 17 December

1979 she asked INPS for leave to pay insurance contributions by way of continuation of the compulsory contributions she had paid in Germany. This request was refused on the ground that she had never been affiliated to the Italian social security scheme.

4 In an action brought by Mrs Baglieri against INPS, the Pretore di Siracusa (Magistrates' Court, Siracusa) held that the latter was required to collect her voluntary insurance contributions and that she was entitled to an invalidity pension. After this judgment was upheld by the Tribunale di Siracusa (District Court, Siracusa), INPS lodged an appeal on a point of law, in the course of which the Corte Suprema di Cassazione decided to stay the proceedings and refer the following question to the Court:

'Is Article 9(2) of Council Regulation (EEC) No 1408/71, in so far as it provides that "the periods of insurance or residence completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State" to be interpreted as meaning that a worker may be admitted to voluntary continued insurance even if he has not completed, in a number of Member States, including the Member State in which the request is made, different periods of insurance that can be aggregated but has completed a single previous period of employment as a migrant worker in one other Member State and has obtained in that State the relevant compulsory insurance required for admission to voluntary insurance in the State in which he has requested admission to voluntary continued insurance?'

5 The national court points out that in Case 70/80 *Vigier* v *Bundesversicherungsanstalt für Angestellte* [1981] ECR 229, the Court held that Article 9(2) of Regulation No 1408/71 does not require a social insurance institution of a Member State to take into account periods of insurance completed under the legislation of another Member State when the worker concerned has never paid, in the first Member State, the contribution required by law in order to create his status as an insured person under the legislation of that Member State.

6 The Corte Suprema di Cassazione considers, however, that there are two reasons which could lead the Court to reconsider that interpretation.

7 Firstly, the Court must take account of 'the impending deadlines which the Community has to meet and, above all, the forthcoming elimination of all obstacles to the free movement of workers'. In view of these deadlines, a restrictive interpretation of the abovementioned provision might prove contrary to the principles of the Treaty governing the free movement of workers and their social security, principles which are necessary in order to safeguard situations already established in the territory of the Community.

8 Secondly, for Italian workers returning to Italy after working in a non-member country, Italian law provides for a special compulsory social security scheme which lays down the criteria for determining and paying contributions. Accordingly, a narrow interpretation of Article 9(2) of Regulation No 1408/71 could result in such workers qualifying for a more favourable scheme than persons who have worked in another Member State.

9 Reference is made to the Report of the Judge-Rapporteur for a fuller account of the facts and the legal background of the main proceedings, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

10 In view of the foregoing, it should be held that, by its request for a preliminary ruling, the national court is seeking to establish whether

— Article 9(2) of Regulation No 1408/71 requires a Member State to allow the affiliation to its social security scheme of persons who have been subject to

compulsory insurance in another Member State and who do not satisfy the conditions for affiliation to the social security scheme of the first Member State;

— Community law requires a Member State which allows its nationals who have worked in a non-member State to be so affiliated to apply the same treatment to its nationals who have worked in another Member State.

11 It should be observed that, as the Court has consistently held (see Case 368/87 *Hartmann Troiani* v *Landesversicherungsanstalt Rheinprovinz* [1989] ECR 1333, paragraph 15), the object of Article 9(2) of Regulation No 1408/71 is to guarantee that periods of insurance completed in different Member States are treated as equivalent so that the persons concerned can satisfy the condition of a minimum length of insurance periods where national legislation makes admission to a voluntary or optional continued insurance scheme subject to such a condition.

12 On the other hand, it is clear from the wording of Article 9(2) that it does not govern the other conditions to which the legislation of any Member State may make subject the acquisition of a right, such as the right to contribute to a national scheme of voluntary or optional continued insurance (see *Hartmann Troiani*, paragraph 16).

13 Accordingly, it is for the legislation of each Member State to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme, provided always that in this connection there is no discrimination between nationals of the host State and nationals of other Member States (see, in particular, *Hartmann Troiani*, paragraph 21).

14 The reasons put forward by the Corte Suprema di Cassazione do not make it necessary for the Court to reconsider this case-law.

15 In referring to 'the impending deadlines which the Community has to meet', the national court no doubt has in mind Article 8a of the Treaty, which provides for the adoption of measures with the aim of progressively establishing the internal market by 31 December 1992. According to the second paragraph of Article 8a, the market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty.

16 That article cannot be interpreted as meaning that, in the absence of measures adopted by the Council by 31 December 1992 requiring the Member States to admit persons who have been subject to compulsory insurance in another Member State to voluntary affiliation to their social security schemes, an obligation to that effect arises automatically by reason of the expiry of that deadline.

17 Indeed, as the Advocate General points out in section 14 of his Opinion, such an obligation presupposes the harmonization of the social security legislation of the Member States and no such harmonization has been carried out as Community law stands at present.

18 Turning, lastly, to the argument concerning the allegedly more favourable treatment under Italian legislation of Italian workers who have worked in a non-member country, suffice it to observe that this is incapable of having any bearing on the interpretation of Article 9(2) of Regulation No 1408/71 and that, in any case, as Community law stands at present, there is no rule prohibiting a Member State from granting nationals who have worked in a non-member country and then returned to their country of origin, where they no longer work, more favourable treatment than nationals who have worked in another Member State and subsequently find themselves in the same situation.

19 Therefore the reply to be given to the national court should be that:

— Article 9(2) of Regulation No 1408/71 does not require a Member State to admit persons who have been subject to compulsory insurance in another Member State and who do not satisfy the conditions for affiliation to the scheme in the first Member State to be affiliated to its social security scheme;

— Community law does not require a Member State which allows its nationals who have worked in a non-member country to be so affiliated, to apply the same treatment to its nationals who have worked in another Member State.

Costs

20 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in reply to the question referred to it by the Corte Suprema di Cassazione, by order of 12 July 1991, hereby rules:

Article 9(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as consolidated by Council Regulation (EEC) No 2001/83 of 2 June 1983, does not require a Member State to admit persons who have been subject to compulsory

insurance in another Member State and who do not satisfy the conditions for affiliation to the schemes in the first Member State to be affiliated to its social security scheme.

Community law does not require a Member State which allows its nationals who have worked in a non-member country to be so affiliated, to apply the same treatment to its nationals who have worked in another Member State.

Due Mancini Moitinho de Almeida Edward

Joliet Schockweiler Grévisse Zuleeg Murray

Delivered in open court in Luxembourg on 20 October 1993.

J.-G. Giraud

Registrar

O. Due

President