JUDGMENT OF THE COURT (Sixth Chamber)
14 March 1996 *

In Case C-315/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Arbeitsgericht Bielefeld (Germany) for a preliminary ruling in the proceedings pending before that court between

Peter de Vos

and

Stadt Bielefeld

on the interpretation of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475),

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. Hirsch, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur) and J. L. Murray, Judges,

* Language of the case: German.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Stadt Bielefeld, by Marion Weike, Stadtverwaltungsdirektorin der Stadt Bielefeld, acting as Agent,

— the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat at the same ministry, acting as Agents,

— the Swedish Government, by Lotty Nordling, Rättschef, acting as Agent,

— the Commission of the European Communities, by Christopher Docksey and Günter Wilms, 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 14 December 1995,

gives the following

Judgment

1 By order of 3 November 1994, received at the Court on 29 November 1994, the Arbeitsgericht Bielefeld (Labour Court, Bielefeld) referred to the Court for a

preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475).

2 That question was raised in the context of a dispute between Mr de Vos ('the plaintiff'), a Belgian national, and Stadt Bielefeld, the municipality of Bielefeld ('the defendant'), which employs him as a senior doctor (Oberarzt).

3 The collective labour agreement of 4 November 1966 applicable to employees of the Federal Republic of Germany and the *Länder* and to employees of municipal authorities and undertakings ('the CLA') envisages for persons in the situation of the plaintiff supplementary old-age and survivors' insurance with the Versorgungsanstalt des Bundes und der Länder (Pension Institution of the Federal Republic and the *Länder*, 'the VBL'). Under Paragraph 29 of the statutes of the VBL, the employer pays monthly contributions to that body for the person insured.

4 The plaintiff performed military service in the Belgian army from 29 March 1993 to 1 March 1994. During that period, the defendant did not contribute to the VBL on behalf of the plaintiff. The VBL therefore suspended the plaintiff's membership from 28 March 1993 to 2 March 1994.

5 Under Paragraph 1 of the Wehrpflichtgesetz (Law on military service, BGBl. 1994, I, p. 1505), all German citizens aged 18 years or over must perform military service.

6 Paragraph 1 of the Gesetz über den Schutz des Arbeitsplatzes bei Einberufung zum Wehrdienst (Law on employment protection on call-up for military service, 'APSG', BGBl. 1980, I, p. 425) provides:

'(1) Where a worker is called up for basic military service or reserve training, the employment relationship shall be suspended during the military service.

(2) An employer must pay remuneration to an employee in the public service during reserve training as in the case of convalescent leave. Remuneration does not include special allowances granted with regard to the convalescent leave.

...'

7 Paragraph 14a of the APSG provides as follows:

'(1) An existing insurance policy in the supplementary old-age and survivors' pension scheme for employees in the public service shall not be affected by call-up for basic military service or reserve training. That shall also apply if the supplementary old-age and survivors' pension is accorded by higher rate insurance or other means.

(2) The employer must continue to pay the contributions (employer's and employee's contributions) during the military service, at the level at which

they would have been payable if the employment relationship were not suspended because of the call-up of the employee.

At the end of the military service, the employer shall notify the Federal Minister of Defence or the department designated by him of the contributions made in respect of the period of military service in order to obtain reimbursement.

The second sentence shall not apply to cases referred to in Paragraph 1(2).

Applications for reimbursement must be submitted during the year following the end of the military service. Any changes made after the period of military service to the amounts of the contributions shall not be taken into account.'

8 In the action brought before the Arbeitsgericht Bielefeld, the plaintiff claimed that the defendant was required to pay contributions to the VBL during the period of his military service in the Belgian army by virtue of Article 48 of the EC Treaty and Article 7 of Regulation No 1612/68 which, in his view, prohibit any discrimination based on nationality between workers of the Member States.

9 Article 7 of Regulation No 1612/68 provides:

'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.

...'

10 Taking the view that the dispute raised a number of questions on the interpretation of Community law, the Arbeitsgericht Bielefeld decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 7(1) and (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community be interpreted as meaning that a worker who is a national of one Member State and is employed in the territory of another Member State is entitled to have payment of contributions (employer's and employee's contributions) to the supplementary old-age and survivors' pension scheme for workers in the public service continued, at the same level as would have been payable if the employment relationship had not been suspended because of his call-up for military service, where nationals of that State employed in the public service are so entitled by law when performing military service in that State?'

11 The defendant and the German Government submit, in essence, that the obligation of the employer to continue to pay contributions for an employee in the public service who is performing his military service is inseparable from the obligation of the Federal Minister of Defence, laid down by the APSG, to reimburse the employer for contributions paid. The latter obligation to reimburse flows from the duty to have regard for the interest of civil servants incumbent upon the Federal Republic of Germany as regards persons called up for military service and does not therefore constitute an obligation arising from the employment contract. In this respect, they consider in particular that Case 15/69 *Südmilch* v *Ugliola* [1969] ECR 363 concerned different circumstances.

12 The German Government further maintains that the employer's obligation to continue throughout the period of military service to pay supplementary old-age and survivors' pension insurance contributions for which it may then claim reimbursement from the Federal Minister of Defence was laid down only for technical administrative reasons.

13 The Swedish Government states that the contributions paid, directly or indirectly, when a worker performs his military service must be regarded as compensation for that service and on no account as either a condition of employment or work or as a social advantage applicable to workers of other Member States in the same circumstances as a Member State's nationals.

14 It should first be considered whether, for the purposes of applying Article 7(1) of Regulation No 1612/68, the system guaranteeing the continued payment of old-age and survivors' pension insurance contributions when a worker performs his military services, as provided for by the German legislation, is linked to that person's conditions of employment or work.

15 In principle, the employer's contribution to supplementary old-age and survivors' pension insurance is part of remuneration since it is a financial benefit granted by the employer, under the CLA, to the worker on account of the employment relationship. However, where the worker fulfils his military service obligations, the employment contract is suspended. Accordingly, the employer's obligation to pay contributions under the employment contract is also suspended.

16 Although Paragraph 14a(2) of the APSG provides that the employer must continue to pay the contributions (employer's and employee's contributions) during the period of military service at the level payable if the employment contract had not been suspended because of the employee's call-up, the fact remains that that obligation on the part of the employer is not linked to the employment contract.

17 As the Advocate General observes at point 33 of his Opinion, the present case is thus different from the *Ugliola* case. In *Ugliola*, Paragraph 6 of the APSG required the employer to take account of absence on military service, by providing in particular that the period of military service should be taken into account in calculating the period of his service with that employer, whereas the obligation arising from Paragraph 14a(2) of the APSG does not, in the main proceedings, form part of the conditions of employment and work. The role of the employer under that provision is merely to cooperate with the Federal authorities by advancing on their behalf, for technical and administrative reasons, the contributions which would have been payable by both the employer and the worker if the employment contract had not been suspended.

18 It should therefore be held that the continued payment of supplementary old-age and survivors' pension insurance contributions, as provided for by the German legislation, is not made by virtue of a statutory or contractual obligation incumbent on the employer as conditions of employment and work, within the meaning of Article 7(1) of Regulation No 1612/68, but is an advantage granted by the State itself to those called up as partial compensation for the consequences of their obligation to perform military service.

19 It should accordingly be considered whether, under Article 7(2) of Regulation No 1612/68, a Member State must provide such an advantage to nationals of other Member States employed within its territory when they fulfil their military service obligations for their own State.

20 The Court has already held that 'social advantages' should be understood to mean all those advantages which, whether or not linked to a contract of employment, are generally granted to national workers 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 likely to facilitate their mobility within the Community (Case 207/78 *Ministère Public* v *Even* [1979] ECR 2019, paragraph 22, and Case C-310/91 *Schmid* v *Belgian State* [1993] ECR I-3011, paragraph 18).

21 As observed above, an advantage such as that which stems from the German legislation for certain categories of national workers serves as partial compensation for those called up for the consequences of their obligation to perform military service.

22 Such an advantage, which is essentially linked to the performance of military service, cannot therefore be considered to be granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and thus does not have the essential characteristics of social advantages referred to in Article 7(2) of Regulation No 1612/68.

23 The reply to the question referred to the Court must therefore be that Article 7(1) and (2) of Regulation No 1612/68 must be interpreted as meaning that a worker who is a national of one Member State and is employed in the territory of another Member State is not entitled to have payment of contributions (employer's and employee's contributions) to the supplementary old-age and survivors' pension scheme for workers in the public service continued, at the same level as would have been payable if the employment relationship had not been suspended because of his call-up for military service, where nationals of that State employed in the public service are so entitled when performing military service in that State.

Costs

24 The costs incurred by the German and Swedish Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Arbeitsgericht Bielefeld by order of 3 November 1994, hereby rules:

Article 7(1) and (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as meaning that a worker who is a national of one Member State and is employed in the territory of another Member State is not entitled to have payment of contributions (employer's and employee's contributions) to the supplementary old-age and survivors' pension scheme for workers in the public service continued, at the same level as would have been payable if the employment relationship had not been suspended because of his call-up for military service, where nationals of that State employed in the public service are so entitled when performing military service in that State.

Kakouris Hirsch Schockweiler

Kapteyn Murray

Delivered in open court in Luxembourg on 14 March 1996.

R. Grass C. N. Kakouris

Registrar President of the Sixth Chamber