JUDGMENT OF THE COURT (Second Chamber)
7 March 1991 *

In Case C-10/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundessozialgericht (Federal Social Court) for a preliminary ruling in the proceedings pending before that court between

Maria Masgio

and

Bundesknappschaft (Federal Pension Fund for Miners)

on the interpretation of Articles 7 and 48 to 51 of the EEC Treaty and Article 3 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 (Official Journal L 230, p. 6),

THE COURT (Second Chamber),

composed of: T. F. O'Higgins, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: M. Darmon,
Registrar: V. Di Bucci, Administrator,

after considering the written observations submitted on behalf of

Maria Masgio, by Kurt Leingärtner and Gert Siller, of the Federal Law Service of the Deutscher Gewerkschaftsbund (German Trades Unions Federation), Kassel, Federal Republic of Germany;

* Language of the case: German.

the Government of the Kingdom of Belgium, by Philippe Busquin, Minister for Social Welfare, acting as Agent; and

the Commission of the European Communities, by Maria Patakia, a member of its Legal Department, acting as Agent, assisted by Bernd Schulte, of the Max-Planck-Institut für ausländisches und internationales Sozialrecht, Munich, Federal Republic of Germany,

having regard to the Report for the Hearing,

after hearing oral argument from Mrs Masgio and the Commission at the hearing on 14 November 1990,

after hearing the Opinion of the Advocate General at the sitting on 15 January 1991,

gives the following

Judgment

1 By order dated 14 November 1989, which was received at the Court on 18 January 1990, the Bundessozialgericht referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 7 and 48 to 51 of the Treaty and Article 3 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 (Official Journal L 230, p. 6).

2 That question arose in the context of a dispute between Maria Masgio, exercising her deceased husband's rights in the main proceedings, and the Bundesknappschaft (Federal Pension Fund for Miners, hereinafter referred to as 'the Fund') concerning the method of calculating the old-age pension to which Mr Masgio was entitled under the German miners' pension scheme.

3 It appears from the case-file sent to the Court by the Bundessozialgericht that Mrs Masgio is the widow of an Italian national who had worked in the mining industry in Belgium and the Federal Republic of Germany. As from 1972, Mr Masgio had received a pension for silicosis from the competent Belgian institution. In accordance with Belgian law, the amount of that pension was reduced in 1983 when Mr Masgio began to receive a Belgian old-age pension.

4 In 1983, the Fund awarded Mr Masgio an old-age pension under the German miners' scheme. The situation of miners simultaneously receiving an old-age pension and an accident pension is governed by Paragraphs 75(1) and 76a of the Reichsknappschaftsgesetz (Law on the Miners' Insurance Fund).

5 The first sentence of Paragraph 75(1) of the Reichsknappschaftsgesetz provides:

'In the event of overlapping entitlement to a miner's pension and to a pension under the statutory accident insurance scheme, payment under the miners' pension scheme shall be suspended to the extent that the miner's pension . . . when added to the accident pension . . . exceeds both 95% of the annual earnings on which the accident pension is calculated and 95% of the basis of calculation of the miner's pension.'

6 Paragraph 76a of the Reichsknappschaftsgesetz provides:

'(1) The provisions concerning overlapping entitlement to a miner's pension and to a pension under the statutory accident insurance scheme shall be applied also where a pension is paid in respect of an occupational accident or disease by an institution situated outside the territory in which this Law applies.

(2) Where a pension is paid by an institution situated outside the territory in which this Law applies, the annual earnings shall not be determined. . . . '

7 Pursuant to Paragraph 76a of the Reichsknappschaftsgesetz, the Fund determined the amount of the old-age pension to which Mr Masgio was entitled, basing the calculation of the portion of the benefits to be suspended on the gross amount of the Belgian accident pension, without taking into account the annual earnings on which the calculation of that benefit was based.

8 In support of their action brought against that method of calculating the old-age pension payable under the German miners' scheme Mr Masgio and, following his death, Mrs Masgio claimed that the first sentence of Paragraph 76a(2) of the Reichsknappschaftsgesetz was incompatible with Articles 48 to 51 of the EEC Treaty and Article 3 of Regulation No 1408/71. They submitted that accident pensions received in another Member State should be treated, for the purpose of applying the rules on suspension, in the same way as accident pensions awarded under German law, so that an annual earnings figure should be determined on each occasion in order to calculate the upper limit of benefits to which suspension does not apply. The plaintiff states that the annual earnings figure is generally higher than the basis of calculation of the old-age pension and that if the annual earnings are not determined a foreign accident pension entails the suspension of a greater portion of the miner's old-age pension than does a pension paid out by a German institution. There is thus discrimination against migrant workers receiving an old-age pension under the German miners' scheme and an accident pension paid by an institution in another Member State in comparison with workers who receive both benefits from a German institution.

9 Considering that the case raised a question of interpretation of Community law, the Bundessozialgericht stayed the proceedings and sought a preliminary ruling from the Court on the following question:

'Does the application and interpretation of Articles 7 and 48 to 51 of the EEC Treaty and Article 3 of Regulation (EEC) No 1408/71 lead to the result that insured persons who are simultaneously receiving a pension granted under national legislation and statutory accident insurance benefits paid by an insurance institution of another Member State may not be put in a worse position than insured persons receiving both benefits under national law for the purposes of calculating the amount of benefit to be suspended pursuant to national legislation (in this case, Paragraph 76a, in conjunction with Paragraph 75, of the Reichsknappschaftsgesetz)?'

10 Reference is made to the Report for the Hearing for a fuller account of the facts of the case in 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.

11 The national court's question seeks, essentially, to ascertain whether Articles 7 and 48 to 51 of the EEC Treaty and Article 3(1) of Regulation No 1408/71 must be interpreted as meaning that a migrant worker who is receiving an old-age pension under the legislation of one Member State and accident insurance benefits paid by an insurance institution of another Member State may not be put in a worse position, for the purposes of calculating the portion of the benefit to be suspended pursuant to national legislation, than a worker who has not exercised his right of free movement and is receiving both benefits under the legislation of a single Member State.

12 When answering that question, it must first be borne in mind that, as the Court has held (see Case 305/87 *Commission* v *Greece* [1989] ECR 1461, paragraphs 12 and 13), the general prohibition of discrimination on grounds of nationality laid down by the first paragraph of Article 7 of the Treaty applies independently only to situations governed by Community law in regard to which the Treaty lays down no specific prohibition of discrimination.

13 The general prohibition of discrimination on grounds of nationality enshrined in Article 7 of the Treaty is implemented and given specific expression, as regards workers, by Articles 48 to 51 of the Treaty and by the measures adopted by the Community institutions on the basis thereof, in particular by Regulation No 1408/71.

14 Article 48(2) of the Treaty provides that freedom of movement for workers is to

'entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'.

15 Under Article 3(1) of Regulation No 1408/71:

'Subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits as the nationals of that State.'

16 Those provisions must be interpreted in the light of their objective, namely to contribute, particularly in the field of social security, to the establishment of the greatest possible freedom of movement for migrant workers, which is one of the foundations of the Community (see, for example, Case 10/78 *Belbouab* v *Bundesknappschaft* [1978] ECR 1915, paragraph 5; Case 284/84 *Spruyt* v *Sociale Verzekeringsbank* [1986] ECR 685, paragraph 18; and Case C-293/88 *Winter-Lutzins* v *Sociale Verzekeringsbank* [1990] ECR I-1623, paragraph 13).

17 In that regard, the Court has already held that Articles 48 to 51 of the Treaty and the Community legislation adopted in implementation thereof, in particular Regulation No 1408/71, are intended to prevent a worker who, by exercising his right of free movement, has been employed in more than one Member State from being placed in a worse position than one who has completed his entire career in only one Member State (see Case 104/76 *Jansen* v *Landesversicherungsanstalt Rheinprovinz* [1977] ECR 829, paragraph 12, and Case 232/82 *Baccini* v *ONEM* [1983] ECR 583, paragraph 17).

18 More specifically, the Court has accepted that the aim of Articles 48 to 51 of the Treaty would not be attained if, as a consequence of the exercise of their right to freedom of movement, migrant workers were to lose the advantages in the field of social security guaranteed to them by the laws of a single Member State (see, for example, Case 24/75 *Petroni* v *ONPTS* [1975] ECR 1149, paragraph 13; Case 807/79 *Gravina* v *Landesversicherungsanstalt Schwaben* [1980] ECR 2205, paragraph 6; Case 284/84 *Spruyt*, cited above, paragraph 19; and Case C-293/88 *Winter-Lutzins*, cited above, paragraph 14). Such a consequence could deter Community workers from exercising their right to freedom of movement and

would therefore constitute an obstacle to that freedom (see Case C-228/88 *Bronzino* v *Kindergeldkassse* [1990] ECR I-531, paragraph 12, and Case C-12/89 *Gatto* v *Bundesanstalt für Arbeit* [1990] ECR I-557).

19 It is clear that a provision such as that in issue before the national court is liable, even though it applies without regard to the nationality of the workers concerned, to place migrant workers in a worse position as regards social security than those who have worked in only one Member State.

20 Legislation such as that in issue in the main proceedings provides that, in the event of overlapping between an accident pension and an old-age pension both payable in the same Member State, the institution of that State responsible for determining the amount of the old-age pension to be suspended must take into consideration both the annual earnings on which the calculation of the accident pension is based and the basis of calculation of the old-age pension and apply whichever of the two ceilings entails the lesser reduction of the old-age pension. However, where the overlapping is between an old-age pension payable in one Member State and an accident pension paid in another Member State, the institution of the first Member State may, under such legislation, determine the portion of the old-age pension to be suspended by reference to the basis of calculation of that pension alone.

21 Consequently, a worker who has been employed solely in a Member State having such legislation and who receives both an accident pension and an old-age pension in that State has available to him, for the purpose of determining the portion to be suspended of the old-age pension payable in that State, an option which is not available to a migrant worker who receives, in addition to the old-age pension to which he is entitled under the legislation of that Member State, an accident pension from an institution in another Member State.

22 It is common ground in the main proceedings that, if the amount of the suspension is determined by reference to the basis of calculation of the old-age pension, this is liable to reduce that pension by a greater amount than if it is determined by reference to the annual earnings figure.

23 Consequently, legislation such as that to which the national court refers, which places Community workers who have exercised their right to freedom of movement in a worse position than those who have not done so, is liable to constitute an obstacle to freedom of movement for workers.

24 It has been argued in the main proceedings that the difference in treatment resulting from the application of such legislation is justified by practical difficulties, namely the fact that where an accident pension is received in another Member State it is often impossible for the institution calculating the amount of the suspension of benefit to ascertain the annual earnings figure. However, Article 48(3) of the Treaty allows of no limitations on the exercise of the right of freedom of movement for workers other than those which can be justified on grounds of public policy, public security or public health. Consequently, there can be no justification for any obstacle to freedom of movement for workers other than in the cases explicitly provided for in the Treaty.

25 It follows from the foregoing considerations that the answer to the national court's question must be that Articles 7 and 48 to 51 of the EEC Treaty and Article 3(1) of Regulation (EEC) No 1408/71 must be interpreted as meaning that a migrant worker who is receiving an old-age pension under the legislation of one Member State and accident insurance benefits paid by an insurance institution of another Member State may not be put in a worse position, for the purposes of calculating the portion of the benefit to be suspended pursuant to the national legislation of the first State, than a worker who has not exercised his right of free movement and is receiving both benefits under the legislation of a single Member State.

Costs

26 The costs incurred by the Government of the Kingdom of Belgium and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (Second Chamber),

in answer to the question referred to it by the Bundessozialgericht, by order of 14 November 1989, hereby rules:

Articles 7 and 48 to 51 of the EEC Treaty and Article 3(1) of Regulation (EEC) No 1408/71 of the Council 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, in the version codified by Council Regulation (EEC) No 2001/83 of 2 June 1983, must be interpreted as meaning that a migrant worker who is receiving an old-age pension under the legislation of one Member State and accident insurance benefits paid by an insurance institution of another Member State may not be put in a worse position, for the purposes of calculating the portion of the benefit to be suspended pursuant to the national legislation of the first State, than a worker who has not exercised his right of free movement and is receiving both benefits under the legislation of a single Member State.

O'Higgins Mancini Schockweiler

Delivered in open court in Luxembourg on 7 March 1991.

J.-G. Giraud
Registrar

T. F. O'Higgins
President of the Second Chamber