JUDGMENT OF THE COURT (Third Chamber)
24 October 1996 *

In Case C-335/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Cour du Travail, Liège, Belgium, for a preliminary ruling in the proceedings pending before that court between

Institut National d'Assurances Sociales pour Travailleurs Indépendants (Inasti)

and

Michel Picard

on the interpretation of Article 36 of Regulation (EEC) No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 86),

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida (Rapporteur), President of the Chamber, C. Gulmann and J.-P. Puissochet, Judges,

* Language of the case: French.

Advocate General: A. La Pergola,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Institut National d'Assurances Sociales pour Travailleurs Indépendants (Inasti), by P. van Glabeke, Deputy Adviser,

— Michel Picard,

— the French Government, by C. de Salins, Assistant Director in the Directorate for Legal Affairs of the Ministry of Foreign Affairs, and A. de Bourgoing, special adviser in the same directorate, acting as Agents,

— the Commission of the European Communities, by M. Patakia of its Legal Service, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 4 July 1996,

gives the following

Judgment

1 By judgment of 10 October 1995, received at the Court on 23 October 1995, the Cour du Travail (Labour Court), Liège, referred to the Court of Justice for a

preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 36 of Regulation (EEC) No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 86, hereinafter 'Regulation No 574/72').

2 Those questions were raised in proceedings between the Belgian Institut National d'Assurances Sociales pour Travailleurs Indépendants (hereinafter 'Inasti') and Michel Picard, a French national residing in Belgium, concerning the date from which he is to be entitled to an old-age pension payable by Inasti.

3 According to the documents forwarded by the national court, Mr Picard, born on 24 December 1931, worked in France for many years and in Belgium from 1 January 1981 to 30 June 1982 and from 1 January 1985 to 31 March 1988. When nearing 60 years of age, he submitted a claim on 11 April 1991 for an old-age pension to the competent French institution, which acceded to it and awarded him a pension as from 1 January 1992.

4 Following specific directions from the French administration, on 11 June 1992 Mr Picard then submitted a claim to the competent Belgian institution, Inasti, through the municipal council of Verviers, Belgium, for an early retirement pension. The Belgian institution initially rejected his claim on the ground that it did not meet the requirements for the award of a pension under Belgian law. Subsequently, having been informed that a pension had been granted to Mr Picard by the competent French institution, Inasti adopted a further decision recognizing his entitlement to a pro rata retirement pension based on the periods of insurance completed in France, with effect from 1 July 1992.

5 On the latter point, Inasti based its decision on the applicable Belgian legislation according to which, first, a claim for a pension must be submitted to the Bourgmestre of the municipality in which the applicant has his main residence and, secondly, a retirement pension cannot be paid before the first month following that in which the claim was lodged.

6 Mr Picard appealed against Inasti's decision, taking exception to both the calculation of the Belgian pension and the date from which it was to be paid (1 July 1992).

7 By judgment of 18 November 1994, the Tribunal du Travail (Labour Tribunal), Verviers, upheld Inasti's decision as regards the amount of the pension awarded to Mr Picard. However, it considered that, pursuant to Article 36(4) of Regulation No 574/72, the date for commencement of payment of the Belgian pension should have been 1 January 1992, which was the date on which an old-age pension was awarded to Mr Picard by the competent French institution.

8 Article 36(4) of Regulation No 574/72 provides:

'A claim for benefits sent to the institution of one Member State shall automatically involve the concurrent award of benefits under the legislation of all the Member States in question whose conditions the claimant satisfies except where, under Article 44(2) of the Regulation, the claimant asks for postponement of any old-age benefits to which he would entitled under the legislation of one or more Member States.'

9 Inasti appealed against the judgment on that point to the Cour du Travail, Liège, taking the view that, under Article 36(1) of Regulation No 574/72, a pro rata retirement pension could be granted to Mr Picard, under Belgian legislation, only with effect from 1 July 1992.

10 Article 36(1) of Regulation No 574/72 provides:

'In order to receive benefits under Articles 40 to 51 of the Regulation, except in the cases referred to in Article 35 of the implementing Regulation, the person concerned shall submit a claim to the institution of the place of residence in accordance with the procedure provided for by the legislation administered by that institution. If the employed or self-employed person has not been subject to that legislation, the institution of the place of residence shall forward the claim to the institution of the Member State to whose legislation he was last subject, indicating the date on which the claim was submitted. That date shall be regarded as the date on which the claim was submitted to the latter institution.'

11 In those circumstances, the national court decided to stay the proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'1. Does Article 36(4) of Regulation No 574/72 lay down a general independent rule which is applicable regardless of whether the provisions of Article 36(1), (2) and (3) have been complied with?

2. If the reply to the first question is in the negative, is an employed or a self-employed person who cannot, without prior recognition of entitlement to a pension by the competent institution of another Member State (in the present case, the Member State of which he is a national), obtain recognition of entitlement to a pension by the competent institution of the State of residence still required to submit a claim in the State of residence in order for benefits to be awarded concurrently?'

The first question

12 The dispute arises from the fact that the procedure followed by Mr Picard in submitting his pension claim does not fit into any of the cases provided for in Article 36(1) to (3) of Regulation No 574/72. Although under the first sentence of Article 36(1) he should have submitted his claim to the institution of his place of residence, namely Belgium, he sent it direct to the competent French institution.

13 According to Inasti, it is clear from Article 36(1) of Regulation No 574/72 that the Belgian retirement pension awarded to Mr Picard could not, under the applicable Belgian legislation, be payable before 1 July 1992, the pension claim having been submitted on 11 June 1992.

14 Inasti also considers that Article 36(4) does not preclude that interpretation, considering that the concurrent award of benefits would be available only if the claimant had submitted his claim properly, in accordance with Article 36(1) of Regulation No 574/72, and that was not the situation prior to 11 June 1992.

15 According to Inasti, the rule in Article 36(4) of Regulation No 574/72 merely supplements the provisions of paragraph 1 of that article and it simply determines the effects of claims submitted in compliance with the procedures laid down by those provisions.

16 That argument cannot be upheld.

17 The claim for an old-age pension submitted by Mr Picard is governed by Article 44(2) 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, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6, hereinafter 'Regulation No 1408/71'), which provides that 'when a claim for the award of a benefit is lodged, such award must be made having regard to all the legislations to which the employed or self-employed person has been subject'.

18 Where a claim for an award has been submitted to an institution of a Member State, it is incumbent on that institution, pursuant to Article 5 of the Treaty and Article 84 of Regulation No 1408/71, to cooperate with the competent institutions of the other Member States in order to proceed with the award and apportionment.

19 The reference date for the making of awards and apportionments by the institutions of the Member States is the date of submission of the claim to the institution approached by the person concerned, that being apparent, as the French Government rightly points out, from Article 86 of Regulation No 1408/71. According to that provision, 'Any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority, institution or tribunal of another Member State shall be admissible if it is submitted within the same period to a corresponding authority, institution, or tribunal of another Member State. In such a case the authority, institution or tribunal receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or tribunal of the former State either directly or through the competent authorities of the Member States concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or tribunal of the second State shall be considered as the date of their submission to the competent authority, institution, or tribunal.'

20 Regulation No 1408/71 thus unambiguously lays down the principle of the concurrent award of benefits where a claim is submitted to an institution of a Member State, the date of submission of the claim constituting the reference date for the award of the benefits for all the institutions concerned.

21 Forming, as it does, part of an implementing regulation, Article 36 of Regulation No 574/72 is to be interpreted in the light of the basic regulation. It cannot detract from full enjoyment of the rights recognized by Regulation No 1408/71.

22 It must be borne in mind that Article 36(4) of Regulation No 574/72 expressly provides that a claim for benefits sent to the institution of one Member State automatically involves the concurrent award of benefits under the legislation of all the Member States in question.

23 Furthermore, the second sentence of Article 36(1) of Regulation No 574/72 also confirms that the date to be chosen as the reference date is the date on which the claim was submitted to an institution in a Member State.

24 It is true that the first sentence of Article 36(1) of Regulation No 574/72 requires the claimant to send his claim to the institution of his place of residence.

25 However, as the Court emphasized in its judgment in Case C-275/91 *Iacobelli* v *INAMI* [1993] ECR I-523, paragraph 13, the provisions of Article 36 of Regulation No 574/72 are of a procedural nature. They were laid down with the aim of simplifying administration in order to exempt migrant workers having rights to assert in different Member States from the requirement to lodge with the

institutions in each of those States an application for the grant of the benefits which they may claim (see, to that effect, Case 108/75 *Balsamo* v *INAMI* [1976] ECR 375, paragraph 9, and Case 41/77 *Warry* [1977] ECR 2085, paragraph 28). The obligation imposed on migrant workers by the first sentence of Article 36(1) to send their claims for benefits to the institution closest to them — that of their place of residence — reflects such concern for administrative simplification.

26 Failure to comply with the obligation laid down by the first sentence of Article 36(1) of Regulation No 574/72, which is a supplementary procedural rule, cannot therefore raise any obstacle to the award of the benefits in question, under Article 44(2) of Regulation No 1408/71, with effect from the date on which a claim was submitted to an institution of a Member State.

27 Accordingly, the answer to be given to the national court must be that Article 36(4) of Regulation No 574/72, which provides for the concurrent award of benefits when a claim for benefits is submitted to an institution of a Member State, lays down an independent procedural rule which applies regardless of whether the provisions of Article 36(1) to (3) have been complied with.

The second question

28 In view of the answer given to the first question, it is unnecessary to answer the second.

Costs

29 The costs incurred by the French Government 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 (Third Chamber),

in answer to the questions referred to it by the Cour du Travail, Liège, by judgment of 10 October 1995, hereby rules:

Article 36(4) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, which provides for the concurrent award of benefits when a claim for benefits is submitted to an institution of a Member State, lays down an independent procedural rule which applies regardless of whether the provisions of Article 36(1) to (3) have been complied with.

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 24 October 1996.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Third Chamber