JUDGMENT OF THE COURT
5 JULY 1967[1]

Kurt Colditz
v Caisse d'Assurance Vieillesse des Travailleurs Salariés de Paris
(Reference for a preliminary ruling by the Cour d'Appel, Paris)

Case 9/67

Summary

1. *Free movement of persons — Migrant workers — Insurance — System provided for by Regulation No 3 — Retention of separate national systems and of separate claims*

2. *Free movement of persons — Migrant workers — Insurance — Implementation of Community rules — Respect for the rights to which recipients are entitled under national legislation*

3. *Free movement of persons — Migrant workers — Old-age and death (pensions) insurance — Simultaneous payment of pensions not obligatory*
(Regulation No 3, Article 28)

1. Cf. paragraph 3, summary, Case 2/67 ([1967] E.C.R.).

2. Since the system of social security for migrant workers aims at conferring on migrant workers the advantages corresponding to their various periods of work, it may not, in the absence of an express exception in conformity with the objectives of the Treaty, be applied so as to deprive the persons concerned of the benefit of part of the legislation of a Member State.
Cf. paragraph 1, summary, Case 46/66, (Rec. 1966, p. 616).

3. There is no general obligation in Community law requiring beneficiaries to claim the simultaneous payment of the various pensions to which they are entitled.

In Case 9/67

Reference to the Court of Justice under Article 177 of the EEC Treaty by the Cour d'Appel, Paris, for a preliminary ruling in the action pending before that court between

KURT COLDITZ

and

CAISSE D'ASSURANCE VIEILLESSE DES TRAVAILLEURS SALARIÉS DE PARIS,

1 — Language of the Case: French.

on the interpretation of Article 28 of Regulation No 3 and Articles 30 to 36 and 83 of Regulation No 4, especially as to whether these provisions must be interpreted to mean that, apart from the special cases provided for by Article 28 (1) (e) and (f) of Regulation No 3, a claim for a pension must necessarily be met simultaneously by each of the national institutions so as to take effect from the date of the first actual claim addressed to one of those institutions,

THE COURT

composed of: Ch. L. Hammes, President, A. Trabucchi and R. Monaco, Presidents of Chambers, L. Delvaux, A. M. Donner, R. Lecourt (Rapporteur) and W. Strauß, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

Mr Kurt Colditz was insured first in Germany and then in France.

In June 1962, when he became 65 years old, he claimed payment from the German social security institution of his old-age pension.

Since he had completed a total of 150 quarters of insurance (100 in Germany and 50 in France), he obtained from the German institution, on the basis of the Community regulations, a pension calculated *pro rata* at 100/150 from 1 May 1962.

The Caisse Française d'Assurance Vieillesse des Travailleurs Salariés de Paris (the French Old-Age Insurance Fund for Wage-Earners, Paris), having been advised of Mr Colditz's claim against the German institution, by decision notified on 14 May 1964 on its own initiative paid the French pension as from 1 July 1962, although Mr Colditz had not yet completed the minimum contribution period conferring entitlement to a pension. This pension was calculated, taking into account the German and French insurance periods, on the basis of 150 insurance quarters.

Mr Colditz however continued to work in France where he thus obtained increased pension rights under the French system. He ceased work in that country on 1 April 1965.

He made a complaint against the decision of the Caisse Française continuing to seek his French pension not from the date of payment of the German pension, but only from the date when he actually ceased work in France, that is to say, 1 April 1965, by which time the total of his insurance periods was thus increased by 11 additional French insurance quarters.

Those 61 quarters of activity in France would then have entitled him to a pension in that country without resorting to

the aggregation of the periods since the minimum insurance period there was 60 quarters.

By a decision given on 22 November 1965 the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole de Paris rejected his complaint against the decision of the Caisse Régionale de Vieillesse des Travailleurs Salariés de Paris. He lodged an appeal against this decision with the Cour d'Appel, Paris. In support of its argument, the Caisse Régionale relied on the provisions of the Community regulations. From those it derived grounds for the conclusion that in the case of pensions of workers coming under various national institutions payment of the various pensions paid by each institution must necessarily be made simultaneously.

On the other hand, according to the insured person, Community law does not prohibit a request that payment of one or more of them shall be postponed. There being no prohibition, it is therefore open to the person concerned, if he has an interest in so doing, to request that the payment of one or more pensions should be postponed since the fact that he was continuing to work in France in this case conferred on him additional rights for the purposes of the payment of the relevant pension.

In those circumstances the Cour d'Appel Paris, by judgment of 28 January 1967, decided to put to the Court of Justice 'the following preliminary question concerning the date from which the various national institutions must pay the pensions which are due from them: to give a ruling as to whether the provisions of Article 28 of Regulation No 3 and of Articles 30 to 36 and 83 of Regulation No 4 must be interpreted to mean that apart from the special cases provided for by Article 28 (1) (e) and (f) a claim for payment of a pension must necessarily be met simultaneously by each of the national institutions so as to take effect from the date of the first actual claim addressed to one of those institutions'.

The judgment in question was transmitted from registry to registry and entered in the Court Register on 6 March 1967.

Pursuant to Article 20 of the Protocol on the Statute of the Court the parties to the proceedings before the Cour d'Appel, Paris, the Council of the EEC, the Commission of the EEC and the Member States were invited to submit their observations.

Only the Commission lodged a written statement of case.

At the hearing on 14 June 1967 the observations of the Commission and the reasoned oral opinion of the Advocate-General were heard.

II — Observations submitted under Article 20 of the Statute

The *Commission* stated first of all that under the various national laws insured persons are entitled to postpone their claims for pensions and to derive advantages from so doing. Those laws are based on the fact that old-age does not affect individuals uniformly. They reflect a modern concept of old-age which no longer regards the age conferring entitlement to a pension as an imperative and uniform requirement but as one to be adapted in terms of the individual's physical condition and capacities.

The Commission then recalled that the Cour d'Appel, Paris on the basis of the finding that Regulation No 3 nowhere prohibits the successive payment of various pensions, 'relies on the provisions of Article 28 (1) (e) and (f) to ask whether simultaneous payment is obligatory apart from this case'. The Cour d'Appel, Paris, 'deliberately preferred to place the problem outside the context of the cases provided for in subparagraphs (e) and (f) and to ask whether

the cases of successive payment of pensions which are expressly provided for therein are exhaustive, or whether mentioning those cases implies *a contrario* that simultaneous payment is obligatory in other cases'.

According to the Commission, a literal interpretation of Article 28 tends 'rather' to the conclusion that simultaneous payment is obligatory. Nevertheless, if this provision is set in the context of Articles 48 to 51 of the Treaty, it is necessary 'rather' to ask oneself what would be the consequences of simultaneous payment and successive payment on the applicant's rights. It is necessary 'to this end to consider them, both with regard to the amount of the pension—for which the applicant requests the postponement of payment—(in this instance the French pension) and with regard to all the advantages to which he is entitled under each of the two systems of payment according to the Community regulations'.

With regard to the French pension, through simultaneous payment (the practice adopted in this instance by the Caisse Française) the person concerned received in 1962 one third of the French pension calculated *pro rata* by means of aggregation under Article 27, on the basis of 50 quarters completed in France. This payment is final, with no possibility of alteration but from 1962 to 1965 the person concerned received the pension while still continuing to contribute.

On the other hand the successive payment of pensions would have made it possible for the person concerned to obtain from 1965 a larger French pension (61/161). In this case he would not have received the French pension from 1962 to 1965 but would clearly have been bound to pay contributions.

In the case of simultaneous payment the German institution would have calculated the pension *pro rata* in 1962 on the basis of 150 quarters. It would not have been calculated *pro rata* from 1962 to 1965 in the event of successive payment and if the French pension had not been paid. The person concerned would thus have received what was due to him for a series of 100 quarters completed exclusively in Germany. However, from 1965 the German institution would have calculated *pro rata* on the basis of 161 quarters according to the ratio of 100/161.

Thus, taking account of the legislation of the two Member States in question and of the aggregate claims of the person concerned, the method of calculating the German pension would differ according to whether the French pension were paid simultaneously or successively. However, with or without calculation *pro rata,* and with 150 or 161 quarters, the amount of the German pension would be constant and equal to that obtained by direct calculation of an insurance period of 100 quarters completed in Germany.

Since the German pension is constant, it may appear in cases such as the present 'inequitable to deprive the person concerned, by virtue of the Community regulations, of the right to claim postponement of the payment of the pension which he receives under French legislation'.

The person concerned however obtains an advantage since for 11 quarters he receives part of the pension whilst the part to be received after his retirement continues to increase. Nevertheless to obtain this advantage, he must temporarily renounce the French part and pay contributions in France. Since with 161 insurance quarters he does not receive any more for the 100 quarters completed under German legislation than with 150 insurance quarters, it is therefore purely on the French part that he 'speculates'. He cannot therefore be criticized for 'speculating' since he is entitled to do so under French legislation and the 'speculation' affects only the amount of the French pension.

In a case like the present the Com-

mission consequently considers that the interpretation of the relevant provisions of Regulation No 3 renders successive payment permissible.

According to the Commission, in the main action the defendant Caisse relied on various procedural provisions of Regulation No 4, in particular Articles 30 to 36 and 83 which apply to the case of simultaneous payment of several pensions.

Nevertheless, since those are purely procedural provisions applicable in cases of the simultaneous payment of various pensions, it is impossible to rely on those provisions to decide in what circumstances a simultaneous payment must take place. Procedural provisions cannot in fact be used to ascertain the context in which they are to be applied.

It is scarcely permissible to conclude that since Regulation No 4 contains procedural provisions solely for the simultaneous payment of pensions Regulation No 3 prescribes simultaneous payment. It is thus impossible to find any special procedural provisions relating to the application of Article 28 (1) (e) and (f) of Regulation No 3.

Simultaneous payment is thus provided for in Regulation No 4 only where it has already been provided for beforehand in the exceptional provisions represented by the said subparagraphs of Regulation No 3. The problem is consequently reduced to one of the interpretation of Regulation No 3.

In sum, then, the Commission considers that the provisions of Article 28 (1) (e) and (f) of Regulation No 3 do not necessarily imply the simultaneous payment of pensions except where the calculation of the pension of which payment is claimed in the first place gives the same result, whether or not a pension in another State is paid simultaneously.

The Commission states that Articles 30 to 36 of Regulation No 4 of the Council do not run counter to such a solution and Article 83 of the same regulation is not directly related to the question asked.

Grounds of judgment

By a judgment dated 28 January 1967 which arrived at the Registry of the Court of Justice on 6 March 1967, the Cour d'Appel, Paris, (18th Chamber) referred under Article 177 of the EEC Treaty 'the following preliminary question concerning the date from which the various national institutions must pay the pensions which are due from them' and asked the Court to: 'rule whether the provisions of Article 28 of Regulation No 3 and of Articles 30 to 36 and 83 of Regulation No 4 must be interpreted to mean that apart from the special cases provided for by Article 28 (1) (e) and (f) a claim for a pension must necessarily be met simultaneously by each of the national institutions so as to take effect from the date of the first actual claim addressed to one of those institutions'.

The said question concerns the legal position of an insured person who continues to work and to pay contributions with a view to acquiring rights to a higher pension and against which the national institution responsible for payment of the said pension invokes on the basis of Articles 27 and 28 of

Regulation No 3 the right on its own initiative to make a payment of the pension on the same date when the insured person obtains the payment of another pension in another Member State.

Since the solution to this question is not expressly governed by the regulations of the Council concerning social security for migrant workers, it can only emerge from the interpretation of those regulations in the light of the objectives of the provisions of the Treaty (Articles 48 to 51) on the basis of which those regulations were adopted.

The regulations have not set up a common system of social security granting the recipient of a pension a single entitlement implying the need for the simultaneous settlement of the various pension rights in all the Member States; they have allowed separate systems to continue creating separate claims against separate institutions against which the recipient has direct rights either under national law alone or national law supplemented, if necessary, by Community law.

Since, in accordance with the objectives of Article 51 of the Treaty, this system aims at conferring on migrant workers the advantages corresponding to their various periods of work, it may not, in the absence of an express exception in conformity with the objectives of the Treaty, be applied so as to deprive them of the benefit of part of the legislation of a Member State.

There is no provision which imposes an obligation to make a simultaneous payment of the pensions in question. Such an obligation could either cause the insured person to have to renounce his right to a pension to which he was entitled in one state until another pension was paid in another state or prevent him from exercising the right, conferred by the legislation of the latter state, of postponing this payment.

It is therefore impossible to derive an argument from Community law for obliging the migrant worker to accept simultaneous payment of the pensions to which entitlement is conferred by the legislative systems of various Member States.

Articles 30 to 36 and 83 of Regulation No 4, which are applicable to cases of simultaneous payment of several pensions, give no indication of the circumstances in which a simultaneous payment must be made. They are in fact purely procedural provisions which lay down how simultaneous payments

are to be effected and not the context in which the said procedure must be applied. This is a special procedure and one which relates to such cases as may arise under Article 28 (1) (e) of Regulation No 3.

The exceptional nature of those situations confirms the fact that simultaneous payment is not the general rule under Regulation No 3.

Costs

The costs incurred by the Commission of the EEC, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Cour d'Appel, Paris, 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 oral observations of the Commission of the EEC;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty instituting the EEC, especially Articles 48 to 51 and 177;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to Regulation No 3 of the Council of the EEC concerning social security for migrant workers, especially Articles 27 and 28;
Having regard to Regulation No 4 of the Council of the EEC concerning social security for migrant workers, especially Articles 30 to 36 and 83;
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 Cour d'Appel, Paris, (18th Chamber) by a decision of that court of 28 January 1967, hereby rules:

Article 28 of Regulation No 3 together with Articles 30 to 36 and 83 of Regulation No 4 does not imply the simultaneous payment, on the basis of the same reference date, of a pension payable in one Member State without recourse to Article 27 and of another pension not yet payable in another Member State;

The decision on costs in the present proceedings is a matter for the Cour d'Appel, Paris.

Hammes Trabucchi Monaco

Delvaux Donner Lecourt Strauß

Delivered in open court in Luxembourg on 5 July 1967.

A. Van Houtte
Registrar

Ch. L. Hammes
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 14 JUNE 1967[1]

Mr President,
Members of the Court,

In the case referred for a preliminary ruling which I have to discuss today, the subject is again a question concerning migrant workers' rights to social security.

The following facts gave rise to the problem:

The plaintiff in the main action before a French court (a German citizen) was employed successively in both France and Germany and affiliated to the social insurance systems there. When he reached the age of 65, in June 1962, he claimed an old-age pension from the German social insurance institution. In accordance with Regulation No 3 of the Council of the EEC concerning social security for migrant workers, it was granted to him with effect from 1 May 1962 on the basis of 150 insurance quarters of which 100 were completed in Germany.

At this point the plaintiff did not wish to avail himself of his insurance rights in France because he was continuing his work there and thus had the opportunity to become entitled to additional benefits under French law.

The French social security fund (the Caisse Régionale Vieillesse des Travailleurs Salariés de Paris), having received notification from the German social insurance institution, on 14 May 1964 on its own initiative issued a decision to pay the French old-age pension, to take effect from 1 July 1962, despite the repeated express protests of the plaintiff.

Against this payment made by the Caisse on its own initiative, Mr Colditz first of all made an application to the Commission de Recours Gracieux and when this application was dismissed by the latter on 12 January 1965 he then appealed to the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole de Paris. He claimed that the French old-age pension was only payable on the termination of his work in France and on the basis of the claim which he had made on 3 March 1965 with the Caisse, that is to say, from 1 April 1965, when he had completed in all 161 quarters.

1 — Translated from the German.