JUDGMENT OF THE COURT
8 APRIL 1976 [1]

Directeur régional de la sécurité sociale de Nancy v Auguste Hirardin and Caisse régionale d'assurance maladie du Nord-Est (preliminary ruling requested by the Cour d'appel Nancy)

Case 112/75

Summary

1. *References for a preliminary ruling — Jurisdiction of the Court — Limits (EEC Treaty, Article 177)*

2. *Social security — Migrant workers — Old age (pensions) insurance — Algeria — Insurance periods completed before 19 January 1965 — Taking into consideration by French institutions — National of a Member State other than France — Recipient*
   (EEC Treaty, Articles 48 to 51. Regulation No 109/65 of the Council, Article 16 (2))

1. Although the Court, when giving a ruling under Article 177, has no jurisdiction to apply Community rules to a specific case or, consequently, to pronounce upon a provision of national law, it may however provide the national court with the factors of interpretation depending on Community law which might be useful to it in evaluating the effects of such provision.
2. The principle of the equal treatment of workers laid down by Articles 48 to 51 of the EEC Treaty implies that provisions of national law cannot be applied as against a worker who, whilst residing in France, is a national of another Member State, where their effect is to deprive such a worker of a benefit awarded to French workers as regards the taking into account, in calculating the old-age pension, of insurance periods completed in Algeria.

In Case 112/75,

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

1 — Language of the Case: French.

DIRECTEUR RÉGIONAL DE LA SÉCURITÉ SOCIALE DE NANCY (Regional Director of Social Security, Nancy),

and

AUGUSTE HIRARDIN, residing at Mont Saint Martin, France,

CAISSE RÉGIONALE D'ASSURANCE MALADIE DU NORD-EST, Nancy,

on the interpretation of Regulation No 3 of the Council of the EEC of 25 September 1958 concerning social security for migrant workers (JO No 30 of 16. 12. 1958, p. 561),

THE COURT

composed of: R. Lecourt, President, A. O'Keeffe and H. Kutscher, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, Lord Mackenzie Stuart and F. Capotorti, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The judgment referring the case to the Court of Justice and the written observations submitted under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. Mr Hirardin, a Belgian national residing in France, was employed in France from 1 July 1930 to 30 September 1939, from 1 January to May 1940 and from 1954 to 1956. He was subsequently employed in Algeria from 16 January 1957 to 31 March 1961 and then again in France from 1961 until the age of retirement.

2. In September 1972, on the occasion of the award of his old-age pension, Mr Hirardin applied to the Caisse régionale d'assurance maladie du Nord-Est (hereinafter referred to as 'the Caisse') to have his period as an employed person in Algeria taken into account in the

calculation of his pension. He based his request on the provisions of French Law No 64-1330 of 26 December 1964, which provides that French nationals repatriated from Algeria may have their periods of employment completed in Algeria before 1 July 1962 taken into account unconditionally.

The Caisse refused to accept this application on the ground that the law in question is only applicable to aliens if they satisfy the conditions laid down by Article 2 of Decree No 62-1049 of 4 September 1962, that is, in particular, that they must have shown devotion to France or rendered exceptional services to that country. Mr Hirardin referred the matter to the Commission de Recours Gracieux (committee for administrative review of social insurance decisions) which accepted his application and the Caisse then decided to take into account the period of employment completed in Algeria.

However, the Regional Director of Social Security, Nancy, (hereinafter referred to as the 'Regional Director' annulled this decision by virtue of his powers of administration and trusteeship. Mr Hirardin then referred the matter to the Commission de première instance du contentieux de la sécurité sociale (Committee of First Instance for Disputes in Social Security matters), Longwy, which upheld the decision to take the period of employment in Algeria into account.

3. The Regional Director appealed against this decision to the Cour d'appel, Nancy. The appeal is based on the following arguments: the law of 26 December 1964 is a law of national unity and can only be extended to aliens who come within one of the categories of persons referred to by Article 2 of the Decree of 4 September 1962. The Regional Director maintains that Mr Hirardin does not fulfil these conditions and cannot claim the application of Regulation No 3 of the Council of the EEC concerning social security for migrant workers on the ground that, as that regulation has not applied to Algeria since 19 January 1965, its provisions could not be applied to periods completed in Algeria before that date, where award of the benefits takes place afterwards.

4. The Cour d'appel, Nancy, considered that the action before it raised a question of interpretation of Regulation No 3 and, on 13 November 1975, decided to request the Court of Justice to give a preliminary ruling on two questions concerning the interpretation of Articles 2, 3, 8 and 12 of Regulation No 3:

'(1) May the discrimination provided for between French nationals and aliens by the Decree of 4 September 1962 be applied to a Community citizen where its effect must be to deprive him of an old-age pension awarded to French nationals?

(2) Hence, in order to avail himself of the Law of 26 December 1964 which takes into account for the purposes of old-age benefits periods of employment completed in Algeria before 1 July 1962, must a Belgian national demonstrate that he fulfils the conditions imposed on aliens by the abovementioned Decree of 4 September 1962?'

5. After finding in its judgment referring the case to the Court of Justice that Mr Hirardin has not brought sufficient evidence to be able to benefit under Article 2 of the decree of 4 September 1962, the Cour d'appel declared:

'Whereas, as regards the second submission, Regulation No 3 of the Council of the European Economic Community, which was adopted pursuant to Articles 48 to 51 of the Treaty of Rome, provides in Article 8 that persons resident abroad shall have the same rights and obligations under social security legislation as the nationals of the host State;

Whereas Article 16 (2) of Regulation No 109/65 provided for the elimination of the reference to Algeria without prejudice to rights already acquired;

Whereas it is therefore necessary, in this instance, to consider the conditions of application of Regulation No 3 in the light of the provisions of the Decree of 4 September 1962 and the Law of 26 December 1964.'

6. The judgment of the Cour d'appel, Nancy, was received at the Court Registry on 25 November 1975.

Written observations were submitted by Mr Hirardin, represented by Mr Borella, Advocate, of the Nancy Bar, the Regional Director, the Caisse and the Commission, represented by its Legal Adviser, Marie-José Jonczy.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Written observations submitted to the Court

1. *Mr Hirardin* recalls that under Article 27 of Regulation No 3 'For the acquisition, maintenance or recovery of the right to benefit, where an insured person has been successively or alternately subject to the legislation of two ore more Member States, the insurance periods and assimilated periods completed under the legislation of each of the Member States shall be aggregated in so far as they do not overlap'.

He considers that although Algeria, whose territory was within the scope of Regulation No 3 by Article 1 (a) and Annex A thereto, became independent on 1 July 1962, it only ceased to be regarded as subject to that regulation after 19 January 1965 by virtue of Regulation No 109/65/EEC of the Council of 30 June 1965 (JO No 125 of 9. 7. 1965, p. 2124). Article 16 (2) of Regulation No 109/65 itself provided for the deletion from the annexes to Regulation No 3 of the reference to Algeria 'without prejudice to rights acquired'.

Therefore, as the Court stated in its judgment in Case 110/73 *(Fiege* v *Caisse Régional d'Assurance Maladie de Strasbourg,* [1973] ECR 1001 at p. 1014) these provisions show that 'Annex A to Regulation No 3, in its former wording, obliges the French social security institutions to honour rights acquired in Algeria by a migrant worker before 19 January 1965'. Similarly, in its judgment in Case 6/75 *(Horst* v *Bundesknappschaft,* [1975] ECR 823 at p. 830), the Court interpreted the concept of 'accrued rights' to mean that 'as far as is necessary for the acquisition, maintenance or recovery of the right to benefit the insurance periods completed in Algeria before 19 January 1965 must be taken into consideration for determining the pensions referred to in Chapters 2 and 3 of Regulation No 3, even if the risk materializes and the claim for the pension is made after that date'.

Secondly, Mr Hirardin maintains that, in so far as they are incompatible with the principle of non-discrimination between Community citizens and national workers contained in Articles 7 and 8 of Regulation No 3, the provisions of the Decree of 4 September 1962 cannot be applied as against migrant workers who are nationals of Member States of the EEC.

For this reason Mr Hirardin suggests that the Court should give the following reply to the first question:

'The effect of the provisions of the Decree of 4 September 1962 cannot be to prevent periods of employment completed by a Community citizen in Algeria before 19 January 1965 from being taken into account:

by virtue of the principle of acquired rights laid down in Regulations Nos 3 and 109/65, whatever the date of determination of such rights. These rights must be protected by national courts, notwithstanding any more restrictive national rules;

secondly, by virtue of the principle of equal treatment.'

Mr Hirardin considers that, at first sight, the second question appears to be outside the jurisdiction of the Court, as defined by Article 177 of the EEC Treaty. It is not for the Court to interpret or apply national law.

However, the question should be read as asking the Court to rule on the meaning and scope of Regulations Nos 3 and 109/65 to the extent to which, for calculating old-age benefits, they require that account be taken of periods of employment completed in Algeria before 19 January 1965 by a Belgian national who does not fulfil the conditions laid down by the Law of 26 December 1964 and the Decree of 4 September 1962.

The reply appears to follow necessarily from the principle of the precedence to be given to Community law. The conditions laid down by the Decree of 4 September 1962 cannot limit the rights which the individual concerned derives from Community rules.

Secondly, Mr Hirardin considers that the principle of non-discrimination contained in Article 8 of Regulation No 3 prohibits the application of the Law of 26 December 1964, the terms of which may result in French nationals' being treated differently from nationals of other Member States. The problem is to determine whether or not the principle of equal treatment imposes a duty on the French State to include the migrant workers of other Member States in the field of application of the Law of 26 December 1964.

The particular features of the Law of 26 December 1964 do not appear to justify the introduction of treatment which is discriminatory as against Community nationals and which is based upon criteria as ambiguous as devotion to France or exceptional services to that nation. The case-law of the Court as laid down in particular in Cases 24/74 *(Caisse Régional d'Assurance Maladie de Paris* v *Biason,* [1974] ECR 999), 44/72 *(Marsmann* v *Rosskamp,* Rec. 1972, p. 1243) and 76/72 *(Michel S.* v *Fonds National de Reclassement Social des Handicapés,* [1973] ECR 457) appears to be based upon the concept that laws — even laws of national unity — cannot introduce into the field of social benefits discrimination capable of disrupting the principle that French nationals and nationals of other Community countries must be treated equally.

2. *The Regional Director of Social Security, Nancy,* observes that the purpose of the two questions put by the Cour d'appel, Nancy, is in fact to discover whether the Law of 26 December 1964 must be applied for the benefit of all aliens who, like Community nationals, may seek equal treatment with French nationals on the basis of the international agreements signed by France.

He maintains that, in order to be validly invoked, the principle of equal treatment of aliens and nationals necessarily implies that the legal position of both groups is identical, once the question of nationality has been set aside. In particular, it is not sufficient that the facts should be apparently identical if they actually represent different legal situations.

The Regional Director maintains that in the present instance the facts represent different legal situations.

In this respect the Regional Director emphasizes that the Law of 26 December

1964 was inspired by a concern for national unity as a result of the events in Algeria, and is in the nature of law for the transformation of rights.

The benefit of the law is conferred subject to the condition that after the independence of Algeria the individuals concerned have preserved on French soil the rights which they derived under the Algerian system and that these rights have been acknowledged and guaranteed by France.

The Franco-Algerian Convention on Social Security signed on 19 January 1965 preserves these rights as regards French nationals repatriated from Algeria, but not as regards aliens, to whom it does not apply.

The substantive effect of the application of the Law of 26 December 1964 to French recipients of benefits is that their rights under the Algerian system are transformed into rights under the French system.

As a corollary, however, its negative effect is that such persons lose any subsequent right as regards the Algerian system.

As regards old-age pensions insurance, Protocol No 3 of 19 January 1965, annexed to the Franco-Algerian Convention on Social Security, exonerates the Algerian institutions from their obligations towards French nationals residing in France arising out of insurance periods completed in Algeria before 1 July 1962.

The application to aliens of the Law of 26 December 1964 produces different effects. It does not transform Algerian rights into French rights, but simply grants French rights and French benefits. The Algerian social security system is liable for all the Algerian benefits with regard to such persons. As regards old-age pension insurance the Algerian institutions are not freed from the burden of paying the benefits.

It is, of course, possible to object that the situation described above is that which already results from the application of the Law of 26 December 1964 to certain categories of aliens. However, although France had accepted, in favour of such aliens and subject to appropriate conditions, responsibility for the payment of benefits which should have been the liability of the countries whose nationals they are, it cannot be obliged to extend this measure in favour of foreign nationals claiming equal treatment which is not justified since their legal position and that of its own nationals are not the same.

As regards the particular case of Mr Hirardin, his position must, in the ordinary way, be considered in the light of the terms of the Convention on Social Security concluded between Algeria and Belgium on 27 February 1968.

3. After setting out the facts involved in the action, *the Caisse Régionale d'Assurance Maladie du Nord-Est* concludes by leaving the case to the wisdom of the Court.

4. The *Commission* recalls that in its judgments in Cases 110/73 *(Fiege)* and 6/75 *(Horst)* the Court has already acknowledged the liability of French social security organizations in relation to insurance periods completed in Algeria before 19 January 1965 by migrant workers within the meaning of Regulation No 3, even if the risk materializes, and the claim for pension is made, after that date. In so doing, the Court based its ruling on Article 16 (2) of Regulation No 109/65.

After setting out again the questions put by the Cour d'appel, Nancy, the Commission maintains that the present case is even more significant than those which gave rise to the two judgments referred to above, since the insurance

period was completed in Algeria before the independence of that country and the risk materialized when the person concerned was subject to French legislation; there is, therefore, no doubt that the insurance periods completed in Algeria before 19 January 1965 must be taken into account by the French institutions in determining the worker's right to a pension.

Therefore, the question whether, on the basis of the principle of equal treatment contained in Article 8 of Regulation No 3, the legislation of one Member State applies to the nationals of other Member States on the same terms as to the nationals of the first Member State, has lost its point.

Mr Hirardin, represented by M. C. Borella, the Regional Driector of Social Security, Nancy, represented by Mrs A. Molon, the Caisse Régionale d'Assurance Maladie du Nord-Est, represented by P. Schlecht and P. Marande and the Commission, represented by its Legal Adviser, Miss M.-J. Jonczy, presented oral argument at the hearing on 11 March 1976.

The Advocate-General delivered his opinion at the hearing on 31 March 1976.

Law

1 By judgment of 13 November 1975, received at the Registry on 25 November 1975, the Cour d'appel, Nancy, has requested the Court of Justice to give a preliminary ruling on two questions relating to the interpretation of certain provisions of Regulation No 3 of the Council concerning social security for migrant workers.

2 These questions have arisen in the context of an action brought by a worker of Belgian nationality residing in France who applied for a period of employment in Algeria between 1957 and 1961 to be taken into account in calculating his old-age pension.

3 The first question asks whether the discrimination provided for between French nationals and aliens by the Decree of 4 September 1962 may be applied as against a Community citizen where its effect must be to deprive him of an old-age pension awarded to French nationals.

4 The second question asks whether, therefore, in order to avail himself of the Law of 26 December 1964 which takes into account for the purposes of old-age benefits periods of employment completed in Algeria before 1 July 1962, a Belgian national must demonstrate that he fulfils the conditions imposed on aliens by the above-mentioned Decree of 4 September 1962?

5 Article 1 of the French Law of 26 December 1964 provides: 'French nationals who have formerly carried on in Algeria a professional or trade activity, who reside in France and who have acquired, are acquiring or who may acquire rights to old-age benefits payable by Algerian institutions shall be entitled to have account taken of periods of activity as employed or self-employed persons completed in Algeria before 1 July 1962 during which they were affiliated to such institutions'.

6 The Decree of 2 September 1965 extended the area of application of the provisions of that Law to aliens in receipt of one or more benefits awarded within the context of the Decree of 4 September 1962 laying down rules of public administration for the application to certain aliens of the Law of 26 December 1961 on the reception and resettlement of French nationals from overseas.

7 The principal result of those provisions is that, in order to be able to claim that periods of employment spent in Algeria be taken into account, aliens must have shown devotion to France or have rendered exceptional services to that country.

8 Although the Court, when giving a ruling under Article 177, has no jurisdiction to apply the Community rule to a specific case or, consequently, to pronounce upon a provision of national law, it may however provide the national court with the factors of interpretation depending on Community law which might be useful to it in evaluating the effects of such provision.

9 In view of the prohibition, contained in Articles 48 to 51 of the Treaty, on any discrimination based on nationality between workers of the Member States, any worker from one of the Member States is to be treated, for the purposes of Regulation No 3, as if he were a national in similar circumstances.

10 However, the Regional Director of Social Security, Nancy, the appellant in the main action, has maintained that foreign workers cannot rely on the principle of equal treatment in order to benefit under the Law of 26 December 1964, since they are not in the same legal situation as the French workers referred to by the Law.

11 He states that the benefit of the law is conferred subject to the double condition that after the independence of Algeria the individuals concerned

have preserved on French soil the rights which they derived under the Algerian system and that these rights have been acknowledged and guaranteed by France.

12 In the case of French nationals, this condition is stated to be satisfied by the Franco-Algerian agreement of 19 January 1965, which substituted rights under the French social security scheme for those held by the individuals concerned under the Algerian system, and exonerated the Algerian institutions from their corresponding obligations.

13 It is alleged that aliens are, however, in a different legal situation, since their Algerian rights have not been transformed into French rights and the French institutions cannot rely on subrogation to those rights as against the Algerian institutions.

14 Such reasoning cannot be decisive in determining the reply to the questions referred to the Court in the present case.

15 In fact, the alleged differences are not the result of Community law but rather of the French law and of the bilateral Franco-Algerian agreement which cannot derogate from the provisions of Community law prohibiting all discrimination between workers of the Member States.

16 Furthermore, in its original version Annex A to Regulation No 3 provided that, for the purposes of applying the regulation, Algeria formed part of French territory.

17 Although Algeria became independent on 1 July 1962, it was only with effect from 19 January 1965 that the reference to Algeria was eliminated from the amended version of Annex A brought into force by Regulation No 109/65 of the Council of 30 June 1965 (OJ of 9. 7. 1965, p. 2124).

18 Article 16 (2) of that regulation expressly provided that that reference was eliminated 'without prejudice to rights acquired'.

19 It must therefore be concluded that the principle of the equal treatment of workers laid down by Articles 48 to 51 of the EEC Treaty implies that

provisions of national law cannot be applied as against a worker who, while residing in France, is a national of another Member State, where their effect is to deprive such a worker of a benefit awarded to French workers as regards the taking into account, in calculating the old-age pension, of insurance periods completed in Algeria.

Costs

20 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

21 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 national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Cour d'appel, Nancy, by judgment of 13 November 1975, hereby rules:

The principle of the equal treatment of workers laid down by Articles 48 to 51 of the EEC Treaty implies that provisions of national law cannot be applied as against a worker who, whilst residing in France, is a national of another Member State, where their effect is to deprive such a worker of a benefit awarded to French workers as regards the taking into account, in calculating the old-age pension, of insurance periods completed in Algeria.

Lecourt Kutscher O'Keeffe Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart Capotorti

Delivered in open court in Luxembourg on 8 April 1976.

A. Van Houtte — Registrar

R. Lecourt — President