JUDGMENT OF THE COURT
18 FEBRUARY 1975 [1]

Alfonso Farrauto
v Bau-Berufsgenossenschaft
(preliminary ruling requested by the Bundessozialgericht)

Case 66/74

Summary

Social security for migrant workers — Pension — Application for — Decision of the competent institution — Direct notification to the claimant — Conditions — Language — Duties of national courts
(Regulation No 4 of the Council, Article 56 (2))

The word 'directly' in Article 56 (2) of Regulation No 4 of the Council must be interpreted as meaning that the nofification referred to in the provision must be effected without an intermediary and that despatch by the postal and telecommunication services meets this condition.

In Case 66/74

Reference to the Court under Article 177 of the EEC Treaty by the Bundessozialgericht for a preliminary ruling in the action pending before that Court between

ALFONSO FARRAUTO, Racalmuto, Italy

and

BAU-BERUFSGENOSSENSCHAFT, Wuppertal, Federal Republic of Germany, on the interpretation of Article 56 (2) of Regulation No 4 of the Council of 3 December 1958 (OJ of 16. 12. 1958, p. 597) implementing and supplementing Regulation No 3 on social security for migrant workers,

1 — Language of the Case: German.

THE COURT

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

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

gives the following

JUDGMENT

Facts

The order of reference and the written observations submitted under Article 20 of the EEC Statute of the Court may be summarized as follows:

I — Facts and procedure

1. The plaintiff in the main action, who is an Italian national and resident in Italy after having worked in Germany, applied to the defendant, an industrial social insurance body in the building sector in Wuppertal, for the restoration of an accident pension which he had previously received for a limited period. By a decision dated 12 January 1971 the defendant rejected the plaintiff's application and the copy of this decision was sent to the defendant on 26 January 1971 by registered post with a form for acknowledgment of receipt. The letter was delivered to the plaintiff on 29 January 1971.

By letter dated 5 May 1971 addressed to the Sozialgericht Düsseldorf the plaintiff appealed against the decision. The letter was received on 19 May by the Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro, which forwarded it to the Sozialgericht, where it was received on 9 June 1971.

On 21 December 1971 the Sozialgericht rejected the application because it was not within the time limit of three months laid down by law.

The plaintiff appealed to the Landessozialgericht for North Rhine-Westphalia which, by judgment dated 10 January 1973, set aside the judgment of the court of first instance since the period for applying to the court had not begun to run because service had not been effected in the prescribed form.

According to the Landessozialgericht, Article 56 (2) of Regulation No 4 [1] prescribes only the person on whom the decision has to be served and not the form of service. It is the national law which applies on this point, in the present case the Verwaltungszustellungsgesetz (VwZG) — Law on service in administrative matters. Article 14 (1) VwZG provides that service out

1 — Article 56 (1) of Regulation No 4 implementing and supplementing Regulation No 3 provided that the victim of an accident at work or of an occupational disease claiming an invalidity pension should address his claim either to the competent institution or to the institution of the district where he lived, which would forward it to the competent institution.

of the jurisdiction is effected through the competent authorities of the foreign country or the Federal consular or diplomatic services in such country.

Paragraph 2 provides: 'The competent institution shall notify the claimant of its decision directly and send a copy to the liaison body of the country in which the claimant lives'. This procedure was not followed in the present case.

2. An appeal was made to the Bundessozialgericht against the decision of the Landessozialgericht. Before giving a decision the Bundessozialgericht stayed the proceedings and referred the case under Article 177 of the EEC Treaty to the Court of Justice for a preliminary ruling on 'how the word directly' in Article 56 (2) of Regulation No 4 implementing and supplementing Regulation No 3 of the Council of the European Economic Community on social security for migrant workers should be interpreted'.

3. It appears from the grounds of the order of reference of the Bundessozialgericht that there is conflicting case-law among the Landesgerichte.

In the grounds of the order the Bundessozialgericht refers to Article 75 (2) of Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71, which departs from Article 56 (2) of Regulation No 4 in so far as it provides that the competent institution has to notify its decision 'directly or through the liaison body of the competent State'. The Bundessozialgericht observes that Regulation No 574/72, however, entered into force only on 1 October 1972 and it does not therefore apply to the present case. In its opinion the words in Article 75 (2) 'or through the liaison body', as also the provision in Article 56 (2) of Regulation No 4 referring to the liaison body, could point to the interpretation that to notify the claimant of the decision of the institution directly is simply the counterpart of notification through the liaison body, and it is left to the national law of each Member State what form of notification should be used.

The Bundessozialgericht also finds that a 'direct' notification of the decision in a strictly literal sense will scarcely ever take place in practice. Further, service by means of the postal authorities will enable the objective to be attained more 'directly' and as a general rule considerably quicker than if it takes place through the diplomatic channels of the Federal Republic of Germany. Finally, on service through the post proof that the claimant has received the notice is possible, since on request delivery to the addressee is confirmed by a receipt.

4. The order of reference of the Bundessozialgericht dated 22 August 1974 was registered at the Court on 13 September 1974.

Written observations were lodged at the Court on behalf of the Commission by its Legal Adviser N. Koch.

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

II — Written observations submitted to the Court

The Commission observes that Article 56 (2) of Regulation No 4 is a provision implementing the principle contained in Article 45 (3) of Regulation No 3 which authorizes institutions and nationals of different Member States to communicate directly with one another, which is not at all the rule in international legal relations. Under Article 56 (2) direct notification appears as the counterpart of notification through an institution (in particular the liaison body), which appears to determine not only the content but also at the same time the

scope of the word 'directly'. This interpretation of Article 56 (2) proceeds from the principle that the form of notification and the manner of effecting it are subject to the rules issued under national law.

The same conclusion may be drawn from the two provisions subsequent to those cited, that is Article 84 (3) of Regulation No 1408/71 and Article 75 (2) of Regulation No 574/72. They have practically not amended the rules previously in force and have re-adopted them almost word for word.

The Commission finds however that this interpretation gives rise to a certain number of objections of both a legal and a practical nature. There could be a conflict between Article 14 (1) VwZG and Article 56 (2) of Regulation No 4 since the latter distinguishes between certain institutions (liaison bodies and institutions of the place of residence) whereas the former provides for the intervention of certain institutions ('competent authorities' and consular or diplomatic services). It is also possible to contend that notification under Article 14 (1) VwZG is complicated and that notification through the post attains its objetive more speedily while still offering sufficient guarantees as regards proof of receipt of the notification.

However, the following aspects of the question should be weightier than these objections.

The laconic concision of Article 56 (2) precludes it from being interpreted as a rule governing service; the manner of such service would have had to be determined with precision. The competent institution would need an intermediary to communicate its decision to the claimant. It is not specified who must be this intermediary. Moreover a rule governing service ousting the applicability of national law would not appear necessary to establish freedom of movement for workers. It is true that the procedure of service through the consular or diplomatic services is more cumbersome; however, no appreciable inconvenience results for the employed person. Finally, the scope of the question of interpretation raised is essentially limited to matters belonging to a past era. If today service through the consular or diplomatic services should prove too difficult, the competent institution could have recourse to the liaison body.

At the hearing on 16 January 1975, the Commission of the European Communities, represented by N. Koch, submitted oral observations.

The Advocate-General delivered his opinion on 29 January 1975.

Law

1 By order dated 22 August 1974, filed at the Court on 13 September 1974, the Bundessozialgericht referred a question under Article 177 of the EEC Treaty on the interpretation of the word 'directly' in Article 56 (2) of Regulation No 4 of the Council (OJ No 30 of 16. 12. 1958, p. 597) implementing and supplementing Regulation No 3 on social security for migrant workers.

2 This question was raised in an action by an Italian national, resident in Italy after having worked in Germany, who was refused further payment of an accident pension by a German industrial social insurance body.

On receipt of notice of the refusal by registered letter with acknowledgment of receipt, the plaintiff brought an action against the decision of the insurance body in the Sozialgericht Düsseldorf, which dismissed the action as inadmissible on the ground that it had been brought after the expiration of the time limit of three months provided for by German law.

On appeal by the plaintiff the Landessozialgericht set aside the decision of the court of first instance on the ground that it was incompatible with Article 14 of the German law on service in administrative matters, which provides that service out of the jurisdiction has to be effected either through the competent authorities of the foreign country or by the consular or diplomatic services of the Federal Republic of Germany.

The question before the Bundessozialgericht, to which the matter came on appeal on a point of law, is whether Article 56 (2) of Regulation No 4 must be interpreted so as to exclude the application of the German legislative provision referred to.

3 Article 56 (2) of Regulation No 4, in force at the time, referring to the case where a worker who is resident in the territory of one Member State has applied for a pension from an institution of another Member State, provided that the competent institution should 'notify the claimant of its decision directly' and send a copy to the liaison body of the country in which the claimant lives.

Before the German courts having jurisdiction in social matters the argument was maintained that this provision was limited to showing the person to whom the decision must be notified, without providing for the form of the notification, so that its sole objective was to show that notification should not be via the liaison body, while leaving it to the national law of each Member State to regulate the form of notification.

4 Such an interpretation, which cannot be inferred from the wording of the provision in question, is not in accordance with the objective and purpose of the provision in the context of Community rules on social security for workers.

These rules, which are contained in measures aimed at ensuring freedom of movement for workers, are concerned with removing certain obstacles of a material and administrative nature which could prevent workers from moving between the Member States.

Direct communication between social security institutions and the persons concerned resident in other Member States, without intermediaries, except for the postal and telecommunication services, serves to simplify administrative formalities and to speed matters up.

For the purpose of such direct communication, including the notification of decisions taken by competent institutions, certain forms and methods are available to safeguard legal certainty in the interests of the persons concerned.

From the point of view of European integration preference must therefore be given to this practice over forms traditionally used to notify administrative decisions out of the jurisdiction.

5 In answer to the question raised it is therefor right to say that the word 'directly' in Article 56 (2) of Regulation No 4 of the Council must be interpreted as meaning that the notification referred to in the provision must be effected without an intermediary and that despatch by the postal and telecommunication services meets this condition.

6 A special problem concerning legal certainty may arise if the decision is notified to the person concerned in a language which he does not understand.

Certain provisions of Community rules on social security for workers take account of difficulties of a linguistic nature by providing either that the institutions and the authorities of a Member State may not reject claims or other documents submitted to them on the grounds that they are written in an official language of another Member State (Article 45 of Regulation No 3 and Article 84 (4) of Regulation No 1408/71), or that certain decisions shall be notified to the claimant in his own language (Article 48 (1) of Regulation No 574/72), but these provisions do not apply in the present case.

The national courts of the Member States must nevertheless take care that legal certainty is not prejudiced by a failure arising from the inability of the worker to understand the language in which a decision is notified to him.

Costs

The costs incurred by the Commission of the European Communities, which

7 has submitted observations to the Court, are not recoverable, and as these proceedings are, insofar as the parties to the main action are concerned, a step in the action before the national court, costs are a matter for that court.

On these grounds,

THE COURT

in answer to the question referred to it by the Bundessozialgericht by order of that court dated 22 August 1974, hereby rules:

The word 'directly' in Article 56 (2) of Regulation No 4 of the Council must be interpreted as meaning that the notification referred to in the provision must be effected without an intermediary and that despatch by the postal and telecommunication services meets this condition.

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco
Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 18 February 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 29 JANUARY 1975 [1]

Mr President,
Members of the Court,

1. An Italian worker had drawn a pension for the period April 1962 to November 1965 in respect of an accident at work in Germany. At the beginning of 1971, he claimed, on the basis of medical certificates, that the effects of the accident had become more serious and

1 — Translated from the Italian.