JUDGMENT OF THE COURT
6 JUNE 1972[1]

Salvatore Murru
v Caisse Régionale d'Assurance Maladie de Paris
(Reference for a preliminary ruling by the Cour d'Appel, Paris)

Case 2/72

Summary

Social security for migrant workers — Insurance in respect of invalidity, old-age and death — Aggregation of completed insurance periods — Period of unemployment — Assimilation to a period of employment — Criteria

(Regulation No 3 of the Council, Article 1(r), Article 27)

It is clear from Article 1(r) of Regulation No 3 that in order to ascertain whether and to what extent a period of unemployment may be assimilated to a period of employment for the purpose of determining the entitlement of a migrant worker to an invalidity, old-age and survivor's pension reference must be made to the legislation of the country under which such period was completed.

In Case 2/72

Reference to the Court 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

SALVATORE MURRU, residing at 8 Via della Repubblica, Gairo (Nuoro), Italy,

and

CAISSE RÉGIONALE D'ASSURANCE MALADIE DE PARIS, 17/19 rue de Flandre, Paris,

on the interpretation of Atricles 1(r), 27, 28 and 33 of Regulation No 3 of the Council of 25 September 1958 concerning social security for migrant workers,

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher, Presidents of Chambers, A. M. Donner (Rapporteur) and R. Monaco, Judges,

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

gives the following

1 — Language of the case: French.

JUDGMENT

Issues of fact and of law

1 — Facts and procedure

The facts and procedure may be summarized as follows:

The applicant in the main action, Mr Murru, worked successively in Italy and in France from 1938 to 1963:

— in Italy, from 1938 to 1946, from 1952 to 1955 and from 1961 to 1963;

— in France, from 1947 to 1951 and from 1956 to 1959.

He seems to have ceased all employment in Italy in 1963. However, he appears to have undergone a period of unemployment from 24 July 1964 to 27 November 1964, during which time he was not in receipt of benefit; this period was however recorded as a result of his registration at an employment exchange in Italy.

On the basis of the provisions of Regulation No 3 of the Council, Mr Murru, whose invalidity had been established on 11 June 1965, submitted a claim in June 1965 to the Caisse Régionale d'Assurance Maladie de Paris (hereinafter referred to as 'the Caisse') for an invalidity pension in France. The Caisse refused to grant him the invalidity pension on the ground that he did not satisfy the employment requirements under French law at the time of the materialization of the risk, which was 11 June 1965.

Mr Murru considered that in pursuance of Article 1(r) of Regulation No 3 of the Council, the Caisse, in deciding whether he satisfied the conditions required, should have taken into account the recorded period of unemployment which he underwent in Italy from 25 July to 27 November 1964. Considering that under French law recorded periods of unemployment are equivalent to periods of employment, he brought the matter before the commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité de Paris.

By decision of 18 March 1970 the latter held that the social security system introduced by the European Economic Community for the benefit of migrant workers did not entitle Mr Murru to claim an invalidity pension under French social security legislation since Italian law did not consider a period of unemployment for which benefit was not payable to be equivalent to a period of employment.

Mr Murru appealed against this decision to the cour d'appel, Paris, which, finding that the parties in the dispute put forward different interpretations of Article 1(r) and of Articles 27, 28 and 33 of Regulation No 3 of the Council, decided by judgment of 1 December 1971 to stay the proceedings and, in pursuance of Article 177 of the EEC Treaty, to refer to the Court of Justice the following question:

> In order to ascertain pursuant to Regulation No 3 of the EEC whether a period of unemployment may be assimilated to a period of employment for the purpose of determining the entitlement of a migrant worker to an invalidity pension, must reference be made to the rules of assimilation prescribed by the legislation under which the period of unemployment occurred or by the legislation of the country in which the invalidity pension is claimed?

The order making the reference was lodged at the Registry of the Court on 10 January 1972. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, the Confédération Française Démocratique du Travail, acting in the name of Mr Murru, the Caisse Régionale d'Assurance Maladie de Paris and the Commission of the European Communities filed written observations.

Having heard the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided that there was no need for a preparatory inquiry.

The Commission made its oral observations at the hearing on 25 April 1972.

The Advocate-General delivered his opinion at the hearing on 18 May 1972.
In the proceedings before the Court the Commission was represented by its Legal Adviser, Italo Telchini.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations submitted under Article 20 of the Statute may be summarized as follows:

The *applicant in the main action* points out that under Article 250 of the code de la sécurité sociale (in its former version) he had, in order to obtain an invalidity pension, to show either that he had worked for 480 hours in the year preceding the declaration of invalidity, of which 120 must have occurred in the first quarter, or that he had been registered as involuntarily unemployed for an equivalent period.
The sole fact that from 25 July to 27 November 1969 he was registered at the Labour Exchange of Gairo (Nuoro, Italy) as a person seeking work therefore entitles him to an invalidity pension. In his opinion, it is not possible to rely on Article 1(r) of Regulation No 3—as the Caisse had done—and to conclude from it that periods treated as periods of employment must be defined by the legislation under which they were completed.
In view of the fact that under Italian law only periods of unemployment for which benefit is received are treated as periods of employment, such a conclusion would lead to the paradoxical result that migrant workers would be deprived of social security rights by an excessively strict interpretation of a Community provision which is intended to favour the free movement of labour by facilitating the retention and acquisition of rights to social security benefits.
Such an interpretation would moreover be contrary to Article 28 of Regulation No 3 which provides that 'The institution of each of the Member States shall, in accordance with its own legislation, determine whether the person concerned satisfies the conditions for entitlement to the benefits prescribed in that legislation'. It must be admitted, at least as regards the acquisition of the right to benefit, that the period of unemployment must be assessed according to the rules of the legislation under which the invalidity pension is claimed, in other words, that of France.
The *Caisse Régionale d'Assurance Maladie de Paris* points out that the Istituto Nazionale della Previdenza Sociale of Nuoro—the competent institution under Article 1(r) of Regulation No 3—does not regard the period during which Mr Murru was registered as unemployed—from 25 July to 27 November 1964—as being assimilated to an insurance period, since it did not entitle him to unemployment benefit.
Having regard to the clear terms of Article 1(r) of Regulation No 3 it cannot consider this period as an assimilated period, with the result that the applicant in the main action is not entitled to an invalidity pension under the French social security system.
The *Commission of the European Communities* observes that under Article 1(r) of Regulation No 3 it is necessary, in order to determine whether and to what extent a period is assimilated to a period of insurance or of employment, to refer to the legislation under which that period was completed.
Furthermore, Article 51 of the EEC Treaty, which is the legal basis of Regulation No 3, provides for 'aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account in the laws of the several countries'; this implies that although each Member State must take into account, in addition to the insurance periods and assimilated periods completed under its own legislation, insurance periods and assimilated periods completed under the legislation of any other Member State, the question of the validity of those periods must be resolved solely in accordance with the legislation under which they were completed.
In its judgment of 5 December 1967 in Case 14/67 (*Landesversicherungsanstalt Rheinland-Pfalz* v *Welchner*, [1967] ECR

331) the Court has already stated that Article 1(r) of Regulation No 3 refers to the conditions under which national law will regard a given period as being equivalent to insurance periods properly so called.
It emerges from the above considerations that the reply to be given by the Court to the question put might be as follows:

Article 1(r) of Regulation No 3 implies that in order to ascertain, for the purpose of determining entitlement to an invalidity pension, whether a period, and in particular a period of unemployment, is an assimilated period and to what extent it is equivalent to a period of insurance or of employment, reference must be made to the legislation under which that period was completed.

Grounds of judgment

1 By judgment of 1 December 1971 which was received at the Court on 10 January 1972 the Cour d'Appel, Paris, has requested the Court, under Article 177 of the EEC Treaty, to interpret Regulation No 3 of the Council of 25 September 1958 concerning social security for migrant workers and to rule whether, for the purpose of establishing whether a period of unemployment may be assimilated to a period of employment in order to determine the entitlement of a migrant worker to an invalidity pension, reference must be made to the legislation of the Member State in which the period of unemployment occurred or to the legislation of the Member State from whose authorities the invalidity pension is claimed.

2 The proceedings before the cour d'appel concern the case of a migrant worker who, after working alternately in France and in Italy, has filed a claim with a French social security institution for an invalidity pension.

3 Since French legislation requires that the person concerned should give evidence of 480 hours of paid employment or its equivalent during the 12 months preceding the finding of invalidity, which in this instance occurred in 1965, it is necessary to know whether the claimant's unemployment during that period may be 'assimilated' to a period of employment.

4 Since the claimant was resident in Italy during the year preceding the finding of invalidity and since the relevant Italian authorities have indicated that a period of unemployment is not recognized by Italian legislation as 'assimilable' to a period of insurance unless it gives entitlement to unemployment benefit, it has been alleged that the Caisse should nevertheless take into account the fact that the claimant was registered as an unemployed person because French law does not require that a period of unemployment be accompanied by receipt of such benefit in order that it may be assimilated to a period of employment.

5 Consequently, Regulation No 3 must be interpreted to ascertain whether a period of unemployment, so as to be assimilated to a period of employment, must be

judged in the light of the legislation of the Member State in which it was completed or that of the Member State in which the invalidity pension is claimed.

6 Pursuant to Article 26(1) of Regulation No 3, the provisions of Articles 27 and 28 of that regulation are applicable by analogy to the case of a migrant worker claiming an invalidity pension who has been subject to French and Italian legislation.

7 Article 27 provides that 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 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.

8 Since that provision does not define the concept of 'assimilated periods' it is necessary to refer to Article 1(r) of the regulation.

9 Article 1(r) provides that 'for the purposes of this regulation ... the term "assimilated periods" means periods treated as insurance periods or, where applicable, as periods of employment, as defined in the legislation under which they were completed, in so far as they are regarded by the said legislation as being equivalent to insurance periods or periods of employment'.

10 This double reference to the legislation under which the period has been completed sets forth very clearly the principle that the said regulation, in so far as it takes 'assimilated periods' into account, intends neither to modify nor supplement national law, provided that the latter observes the provisions of Articles 48 to 51 of the Treaty.

11 In particular, the phrase 'in so far as they are regarded ... as being equivalent ...' shows that the regulation is also referring to the conditions under which national law will regard a given period as being equivalent to insurance periods properly so called.

12 It is clear then from Article 1(r) of Regulation No 3 that in order to ascertain whether and to what extent a period of unemployment may be assimilated to a period of employment for the purpose of determining the entitlement of a migrant worker to an invalidity pension, reference must be made to the legislation under which such period was completed.

Costs

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

submitted observations to the Court, are not recoverable and as these proceedings are in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 51 and 177;
Having regard to Regulation No 3 of the Council concerning social security for migrant workers, especially Articles 1, 26, 27 and 28;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities, especially Article 20;
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, by judgment of 1 December 1971, hereby rules:

In order to ascertain whether and to what extent a period of unemployment may be assimilated to a period of employment for the purpose of determining the entitlement of a migrant worker to an invalidity pension, reference must be made to the legislation under which such period was completed.

Lecourt Mertens de Wilmars Kutscher

Donner Monaco

Delivered in open court in Luxembourg on 6 June 1972.

A. Van Houtte
Registrar

R. Lecourt
President