JUDGMENT OF THE COURT
16 MARCH 1977 [1]

Fernand Liègeois v Office national des pensions pour travailleurs salariés (preliminary ruling requested by the Tribunal du Travail of Charleroi)

Case 93/76

Social security for migrant workers — Voluntary or optional continued insurance within the meaning of Article 9 (2) of Regulation No 1408/71 — Concept

The expression 'voluntary or optional continued insurance' appearing in Article 9 (2) of Regulation No 1408/71 covers assimilation to periods of employment for the purposes of insurance for periods of study whether there is any continuance of existing insurance or not.

In Case 93/76

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail (Labour Court) of Charleroi, for a preliminary ruling in the action pending before that court between

FERNAND LIÉGEOIS, Marcinelle

and

OFFICE NATIONAL DES PENSIONS POUR TRAVAILLEURS SALARIÉS (National Pensions Office for Employed Persons), Brussels

on the interpretation of Article 9 (2) of Regulation No 1408/71,

THE COURT

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

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

1 — Language of the Case: French.

JUDGMENT

Facts

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The applicant in the main action, a Belgian national, studied engineering in Belgium from 1950 to 1954 and in France from 1954 to 1956. Having completed his military service in Belgium he worked in France from 1958 to 1960. After continuing his studies in the United States from 1960 to 1963, he worked in France again in 1964 and 1965. From 1966 to 1970 he worked in the United States and since 1971 he has been working in Belgium.

Belgian legislation allows a worker, within the general pension scheme for employed persons to assimilate periods spent in study to periods of employment, subject to his paying the appropriate contributions. On the basis of these provisions Mr Liégeois requested the competent Belgian authority, the Office national des pensions pour travailleurs salariés (ONPTS), the defendant in the main action, so to assimilate his periods of study (1 January 1951 to 31 August 1956 and 1 September 1960 to 31 August 1963).

By a decision of 23 January 1974, the ONPTS rejected this request on the ground that the person concerned did not fulfil one of the requirements of Belgian legislation for the buying in of periods of study, namely, the pursuit immediately after the period of study, of an occupation in which he was subject to Belgian law on pensions for employed persons.

On 21 February 1974 Mr Liégeois brought an action before the Tribunal du Travail, Charleroi, contesting the decision of the ONPTS and claiming that under Article 9 (2) of Regulation No 1408/71 the insurance periods completed in France immediately after his periods of study should be regarded as insurance periods completed in Belgium.

Article 9 (2) of Regulation No 1408/71 provides that

'Where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of insurance periods, any such periods completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State.'

The Tribunal du Travail, Charleroi, considering that the settlement of the dispute in the main action was bound up with certain provisions of Community law decided by judgment of 9 September 1976 to stay proceedings and to refer to the Court of Justice under Article 177 of the EEC Treaty the following questions for a preliminary ruling:

1. Is the condition laid down by Article 7 (1) (i) of the Belgian Royal Decree of 21 December 1967 on the general regulation of the retirement and survival pensions scheme for employed persons and consisting in the obligation on the part of an employed person who wishes to

regularize his periods of study to prove that he exercised, immediately after such periods, a professional or trade activity such as to bring into application the Belgian Royal Decree No 50 of 24 October 1967, concerning the same pensions, affected by Article 9 (2) of European Economic Community Regulation No 1408/71 as being a clause under which admission to voluntary or optional continued insurance is made conditional upon the obligation to complete an insurance period, or by any other provision of a European regulation?

2. If question No 1 is answered in the negative, can the employed person of Belgian nationality claim either equality of treatment under Article 3 (1) of Regulation No 1408/71, or to have taken into consideration the insurance period completed in France as though it had been completed under Belgian legislation under Article 45 (1) of the same regulation, that is, for the acquisition, retention or recovery of the right to benefits of old-age and death insurance (pensions), or under any other provision of Community law?

The judgment making the reference was received at the Court on 28 September 1976.

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

II — Summary of the written observations submitted to the Court

The *plaintiff in the main action* observes that his position is that of an employed person moving within the EEC. The regularization of periods of study for the purpose of determining the pension rights of the employed person is indeed a matter of admission to continued voluntary or optional insurance. By making this admission subject to proof that immediately after his studies he exercised a professional or trade activity involving the application of the Belgian Royal Decree No 50, Article 7 (1) (i) of the Belgian Royal Decree of 21 December 1967 does in fact make admission to voluntary or optional continued insurance subject to completion of an insurance period. It is therefore appropriate to apply Article 9 (2) of Regulation No 1408/71.

It is likewise appropriate to apply Article 45 of Regulation No 1408/71 as amended by Regulation (EEC) No 2864/72, Articles 1 to 13, since Belgian legislation makes the acquisition, retention or recovery of the right to old-age and pension benefits subject to the completion of insurance or residence periods. Under these Community regulations account must in the same way be taken of any period completed under the legislation of another State, in this case France.

The *defendant in the main action* leaves the matter to the discretion of the Court. It merely observes that Mr Liégeois, having been subject to payment for French social security, fulfils the conditions required for his being allowed to assimilate his periods of study, if the Court considers that the insurance periods completed under the legislation of a Member State must be deemed to have been completed under the legislation of another Member State in accordance with Articles 9 (2) and 45 (1) of Regulation No 1408/71.

The *Commission* first asserts that the only problem arising in the main action in the present case is to determine whether the requirement of having first been compulsorily subject to Belgian social security legislation immediately after the end of studies can, having regard to the application of Regulation No 1408/71, be so held against a worker as to prevent his buying in his periods of study with a view to assimilating them to

periods of employment when that worker has immediately after his studies been compulsorily subject to the social security legislation of another Member State of the Community.

Whilst under Belgian legislation students are not bound to join the general social security system, they are so bound under French law. Under Belgian law periods of military service are assimilated to periods of employment as a worker for the purpose of applying the general pension scheme, provided that the person concerned was employed as a worker in Belgium at the time of his call-up for military service or has been a worker for at least one year within the three years following the end of his military service.

It appears to the Commission that, within the framework of the free movement of workers within the Community, and within a system of coordination of the social security legislation of the Member States, the requirement of having been subject to Belgian legislation, evident from the system of calculating contributions for buying in periods of study, is an obstacle to the free movement of workers.

The application of Article 9 (2) of Regulation No 1408/71 raises two problems. First, should Article 7 of the Belgian Royal Decree of 21 December 1967 be deemed to provide for voluntary insurance? This concept is nowhere defined in Community regulations. It should however be said that the person concerned is left free to choose whether to pay contributions for buying in periods of study. There is thus no doubt about the voluntary nature of such a purchase. However can the requirement of compulsory insurance under Belgian law at the time of first employment after studies be deemed to make admission to this insurance subject to completion of the insurance periods under the said Article 9 (2)? The only condition requisite for the application of this provision is that the person concerned should at some time have been a worker in the relevant Member State. Article 1 (a) (iii) of Regulation No 1408/71, which lays down that 'worker' means any person who is voluntarily insured if such person has previously been compulsorily insured for the same contingency under a scheme for employed persons of the same Member State, does not run counter to such an interpretation, for the sole purpose of this provision is simply to show who is classed as a worker; no provisions exist whereby periods completed before and after his becoming subject to insurance shall be treated differently.

Consequently the Commission considers that the appropriate answer to the court's question is as follows:

'In the absence of any express provision in Community regulations allowing coordination of the legislation between the Member States for the purpose of assimilation of periods of study to periods of actual work, it is proper, in order to ensure the free movement of workers, to regard the provisions of a national legislation which allows such assimilation by payment of voluntary contributions for the said periods as voluntary insurance to which Article 9 (2) of Regulation No 1408/71 of the Council applies.'

In the course of the oral procedure the defendant in the main action contended that the assimilation of periods of study to periods of employment does not constitute admission to voluntary insurance and that Article 9 (2) applies only to periods of voluntary or optional continued insurance completed after a period of compulsory insurance.

The oral submissions of the plaintiff in the main action, represented by Mr Dom, of the defendant in the main action represented by Mr Pettot and of the Commission represented by Miss Jonczy, acting as Agent, were heard at the hearing on 9 February 1977.

The Advocate-General delivered his opinion at the hearing on 2 March 1977.

Law

1 By judgment of 9 September 1976, received at the Court Registry on 28 September, the Tribunal du Travail, Charleroi, under Article 177 of the EEC Treaty, asked two questions on the interpretation of Article 9 (2) of Regulation No 1408/71 of the Council of 14 June 1971 (OJ, English Special Edition 1971 (II), p. 416).

2 These questions were raised in proceedings concerning the right of a Belgian national, the plaintiff in the main action, to the assimilation, allowed under certain conditions by Belgian law, of periods of study to periods of employment.

3 The person concerned studied in Belgium from 1950 to 1954 and in France from 1954 to 1956, then worked in the latter country from 1958 to 1960 after doing his military service in Belgium.

4 After pursuing his studies in the United States from 1960 to 1963 he worked in France again in 1964 and 1965, then in the United States until 1971, and from then on in Belgium.

5 His request to buy in his periods of study was rejected by the competent Belgian authority, the defendant in the main action, on the ground that in his case one of the conditions required by Belgian legislation under which an occupation must be pursued immediately after studies, involving the application of the Belgian legislation on retirement and survival pensions for employed persons, was not fulfilled.

6 The first question asks whether the condition laid down in Article 7 (1) (i) of the Belgian Royal Decree of 21 December 1967, consisting in the obligation on the part of an employed person who wishes to regularize his periods of study to prove that he exercised, immediately after such periods, a professional or trade activity in Belgium, is affected by Article 9 (2) of

Regulation No 1408/71 as being a clause under which admission to voluntary or optional continued insurance is made conditional upon the obligation to complete an insurance period, or by any other provision of a Community regulation.

7 The second question asks whether, if the first question is answered in the negative, the employed person of Belgian nationality can claim either equality of treatment under Article 3 (1) of Regulation No 1408/71 or to have taken into consideration the period of insurance completed under Belgian legislation within the meaning of Article 45 (1) of the same regulation, that is, for the acquisition, retention or recovery of the right to benefits of old-age and death insurance (pensions), or under any other provision of Community law.

8 Article 9 (2) of Regulation No 1408/71 as amended by Regulation No 2864/72 of the Council of 19 December 1972 (JO L 306, p. 1), provides that 'Where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of insurance periods, the insurance periods or residence periods completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were insurance periods completed under the legislation of the first State'.

9 The plaintiff in the main action states that the regularization of periods of study for the purpose of determining the pension rights of the employed person is a matter of admission to continued voluntary or optional insurance involving the application of Article 9 (2).

10 The defendant in the main action, on the other hand, contested this statement on the ground that, first, the assimilation of periods of study to periods of employment does not constitute admission to voluntary insurance and, secondly, that Article 9 (2) applies only to periods of voluntary or optional insurance completed after a period of compulsory insurance.

11 In support of its first objection the defendant in the main action points out that, apart from the assimilation of periods of study to periods of employment, there is under Belgian legislation what is called 'voluntary insurance', where the method used for calculating contributions differs from

that used for the admission of periods of study and where the rules of application also differ.

12 A comparison of the wording used in the six official languages has shown up variations in the versions in the different languages of Article 9 both as to the distinction between voluntary and optional insurance and as to the concept of continued insurance.

13 The several versions used the following expressions:

— freiwillige Versicherung oder freiwillige Weiterversicherung

— voluntary or optional continued insurance

— frivillig forsikring eller frivillig fortsat forsikring

— assurance volontaire ou facultative continuée

— assicurazione volontaria o facoltativa continuata

— vrijwillige of vrijwillig voortgezette verzekering

14 The different expressions used anyhow show an intention to cover every type of insurance incorporating a voluntary element and it matters little whether there is any continuance of existing insurance or not.

15 The assimilation of periods of study and periods of employment is devoid of purpose unless it gives those concerned the benefit of insurance for the periods in question subject to their paying the contributions prescribed by the national legislation.

16 It follows that for the purposes of Article 9 (2) this assimilation must be considered as admission to voluntary assurance.

17 The answer to the first question asked by the Tribunal du Travail, Charleroi, must therefore be that the expression 'voluntary or optional continued insurance' appearing in Article 9 (2) of Regulation No 1408/71 covers assimilation to periods of employment for the purposes of insurance for

periods of study whether there is any continuance of existing insurance or not.

18 The second question therefore no longer calls for an answer.

Costs

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

20 As these proceedings are, so far as the parties to the main action are concerned, a step in the action pending before the Tribunal du Travail, Charleroi, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal du Travail, Charleroi, by judgment of 9 September 1976 hereby rules:

The expression 'voluntary or optional continued insurance' appearing in Article 9 (2) of Regulation No 1408/71 covers assimilation to periods of employment for the purposes of insurance for periods of study whether there is any continuance of existing insurance or not.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 16 March 1977.

A. Van Houtte — Registrar

H. Kutscher — President