JUDGMENT OF THE COURT OF 12 JULY 1979 [1]

Bruno Brunori v Landesversicherungsanstalt Rheinprovinz (preliminary ruling requested by the Landessozialgericht für das Land Nordrhein-Westfalen)

"Social security for craftsmen"

Case 266/78

Social security for migrant workers — Old-age and death insurance — Affiliation — Conditions — Application of national legislation
(Regulation No 1408/71 of the Council, Art. 45)

The sole objective of Regulation No 1408/71 of the Council is to co-ordinate the national legal systems of social security, each of which determines the conditions for affiliation to the various social security schemes, including the conditions under which compulsory affiliation ceases. That regulation therefore, and in particular Article 45 thereof, cannot be interpreted as laying down the conditions under which compulsory insurance arises or ceases, since the answer to that question is exclusively a matter for the appropriate national laws.

Consequently Article 45 is not applicable so as to determine the existence or non-existence of an obligation to effect insurance laid down by national legislation.

In Case 266/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Landessozialgericht für das Land Nordrhein-Westfalen [Higher Social Court for North Rhine-Westphalia] for a preliminary ruling in the proceedings pending before that court between

BRUNO BRUNORI, master stonemason and sculptor in stone,

1 — Language of the Case: German.

and

LANDESVERSICHERUNGSANSTALT RHEINPROVINZ [Regional Insurance Institution for the Rhine Province] Düsseldorf,

on the interpretation of Article 45 (1) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, having regard to Article 1 (1) of the Gesetz über eine Rentenversicherungsgesetz [German Law on insurance of craftsmen] of 8 September 1960,

THE COURT

composed of: H. Kutscher, President, Lord Mackenzie Stuart (President of Chamber), P. Pescatore, M. Sørensen, A. O'Keeffe, A. Touffait and T. Koopmans, Judges,

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

gives the following

JUDGMENT

Facts and Issues

The facts of the case, 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 written procedure

Bruno Brunori, an Italian national, born in Perugia, Italy, on 21 November 1932, had his name entered on 19 September 1975 by the Chamber of Crafts on the Register of Craftsmen as a self-employed master stonemason and sculptor in stone.

On 30 January 1976 the Landesversicherungsanstalt Rheinprovinz [Regional Insurance Institution for the Rhine Province] informed Mr Brunori that he was subject to compulsory insurance under the Gesetz über eine Rentenversicherung der Handwerker — Handwerkerversicherungsgesetz of 8 September

1960. The first sentence of Article 1 (1) of that law provides that where craftsmen whose names are entered on the register of craftsmen have paid contributions in respect of a compulsorily insurable occupation or activity for less than 216 calendar months, they shall be covered by the old-age insurance for employed persons.

Mr Brunori lodged an objection to that decision on 10 February 1976. He claimed in particular that before his name was entered on the register of the Chamber of Crafts he had as an employed person from 1 October 1952 to 31 August 1956, that is for 47 months, paid contributions to the Italian old-age insurance scheme and for 185 months from 29 July 1959 to 30 November 1974 he had made compulsory contributions to the German old-age insurance scheme for employed persons.

He claimed that by the application of the principle of aggregation provided for in Article 45 of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) the total of insurance periods completed by him in Italy and Germany exceeds the minimum of 216 months' contribution laid down by the Handwerkerversicherungsgesetz.

Mr Brunori entered paid employment again on 1 September 1976 and his objection to the decision was dismissed by the Landesversicherungsanstalt Rheinprovinz by decision dated 21 July 1977.

Mr Brunori instituted proceedings on 11 August 1977 before the Sozialgericht Köln [Social Court, Cologne], but his application was dismissed by judgment dated 21 July 1978.

Mr Brunori appealed on 20 September 1978 to the Landessozialgericht für das Land Nordrhein Westfalen.

That court by order of its third chamber of 8 December 1978 stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

(1) Is Article 45 of Regulation (EEC) No 1408/71 of the Council, which governs the taking into consideration of insurance periods completed in other Member States for the acquisition, retention or recovery of the right to benefits, also to be applied by analogy to the existence of the obligation to effect social insurance?

(2) When deciding the question of the obligation to insure, which is laid down in the first sentence of Article 1 (1) of the Handwerkerversicherungsgesetz and which ceases to apply only when there are 216 monthly insurance contributions, are Italian contributions also to be added to the German insurance contributions or not?

The order of the Landessozialgericht für das Land Nordrhein Westfalen was lodged at the Court Registry on 22 December 1978.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged on 13 March 1979 by the Commission of the European Communities, represented by its Legal Adviser, Norbert Koch.

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

The Court asked the Landesversicherungsanstalt, however, to give a written answer to two questions and this was done within the prescribed period.

II — Written observations lodged at the Court

The following are the main observations of the *Commission of the European Communities:*

(a) Although the questions put to the Court are based on the material scope of Regulation No 1408/71, the question whether or not there is compulsory insurance necessarily involves also the question of the persons to whom it applies.

The decisive factor in this respect is that the regulation applies, according to the combined provisions of Article 2 (1) and Article 1 (a) (i) thereof, to any person who is insured, compulsorily or on an optional continued basis under a social security scheme. The existence of insurance cover (in the present case compulsory insurance) is therefore by reason of the regulation's definition of "worker" a condition for the application of the regulation to the plaintiff in the main action. The latter uses the regulation to show that in his case he is not liable to compulsory insurance and does so by bringing "compulsory insurance" within the material scope of the provisions on aggregation. The fact that the plantiff in the main action was not liable to compulsory insurance would however itself mean that the regulation did not apply to him while he was a craftsman.

Aggregation by application of the regulation to determine whether there is compulsory insurance as provided for by the Handwerkversicherungsgesetz is conceivable only as long as it does not lead to a total of 216 months. Beyond that figure it could not mean that insurance is no longer compulsory since at one and the same time it would take away the status of insured person and a personal condition of application.

A regulation which defines the persons to whom it applies in terms of compulsory insurance and thus in terms of the personal scope of national systems of social security cannot at the same time have intended to establish its own rules as to whether or not insurance is compulsory. The definition would become meaningless and the status of insured person would be simultaneously the condition for and the consequence of the application of the regulation.

(b) Article 45 (1) of Regulation No 1408/71 requires insurance institutions to take account of insurance periods or periods of residence completed under the legislation of a foreign State if their own legislation makes the acquisition, retention or recovery of rights to benefits conditional upon the completion of such periods.

Article 51 of the Treaty and the provisions of Regulation No 1408/71 contemplate aggregation of periods only for the acquisition, retention or recovery of the right to benefits and their calculation.

No claim for benefits is made in the main action. The question is whether the conditions are satisfied whereby insurance ceases to be compulsory, that is whether the condition of 216 months' contribution must be satisfied within the

territorial scope of the German Law on the Insurance of Craftsmen or whether it is proper to take into account in this respect insurance periods completed under the legislation of a foreign State.

It is clear that the wording of Article 45 (1) does not require that periods abroad should be taken into account in determining whether compulsory insurance applies. At the most the question may arise whether that provision applies by way of analogy to this situation. That might be the case if Article 45 were based on a general principle of removing the territorial basis from the other conditions laid down by municipal law, but there is no such principle in Community law — quite the contrary (Article 1 (r) and (s) of Regulation No 1408/71).

The only principle of Community law relevant in this context is that whereby each Member State remains free to determine also the territorial conditions which, within the scope of its powers, it attaches to the recognition of insurance periods as periods completed under its own legislation.

(c) No other provision of Regulation No 1408/71 or any other provision of Community social law involves the assimilation of insurance periods completed under foreign legislation to insurance periods completed under the German legislation for the purposes of applying Article 1 (1) of the German Law on the Insurance of Craftsmen. In this respect moreover co-ordination at Community level does not really seem necessary.

Article 10 (2) of Regulation No 1408/71 leads to no other conclusion.

(d) The questions put to the Court should be answered as follows:

— Article 45 of Regulation No 1408/71 provides for periods completed under the legislation of another Member State to be taken into account solely for the purpose of the acquisition, retention or recovery of rights to benefit. That provision applies neither directly nor by way of analogy to determine whether insurance is compulsory.

— There is no provision of Community law assimilating Italian insurance contributions to German contributions for the purpose of determining whether compulsory insurance arises under Article 1 (1) of the German Law on the Insurance of Craftsmen.

III — Oral procedure

The Landesversicherungsanstalt Rheinprovinz, the defendant in the main action, represented by Mr Schmidinger, the managing director, and the Commission, represented by its Agent, Norbert Koch, made oral observations and replied to questions put by the Court at the hearing on 28 June 1979.

The *Landesversicherungsanstalt Rheinprovinz* argued that the plaintiff in the main action comes within the personal scope of Regulation No 1408/71 in accordance with Articles 1 and 2 thereof, but Article 45 (1) of the regulation does not apply to him in respect of his no longer being subject to compulsory insurance. Article 45 provides for taking account of insurance periods completed in other Member States only for the acquisition, retention or recovery of a right to benefit. Its application by analogy to the question of insurance

no longer being compulsory after completion of a certain insurance period is provided for neither by the regulation nor by Articles 2, 7 and 51 of the EEC Treaty. Compulsory insurance depends on the municipal law of each Member State. It is necessary to distinguish between the right to benefits, in respect of which insurance periods completed in another Member State are taken into account, and the question of compulsory insurance, which is determined by German law alone. Liability ceases only after contributions for 216 months have been paid to the German old-age insurance scheme.

The Advocate General delivered his opinion at the hearing on 4 July 1979.

Decision

1 By order dated 8 December 1978, received at the Court on 22 December 1978, the Landessozialgericht für das Land Nordrhein-Westfalen referred to the Court under Article 177 of the EEC Treaty questions on the interpretation of Article 45 of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons (Official Journal, English Special Edition 1971 (II), p. 416) in connexion with the application of the German Law on pension insurance for craftsmen.

2 The plaintiff in the main action is an Italian national who, following a period of employment in Italy, where he paid contributions for 47 months to the Italian old-age insurance scheme, was employed in the Federal Republic of Germany, where he paid compulsory contributions for 185 months to the German old-age insurance scheme. On 19 September 1975 his name was entered by the Chamber of Crafts on the Register of Craftsmen as a self-employed master stonemason and sculptor in stone. From that date he became subject to the Law on pension insurance for craftsmen which provides for compulsory insurance in the pension scheme for employed persons so long as the insured has paid contributions for less than 216 months. It appears from the file that the plaintiff has once again been working as an employed person as from 1 September 1976.

3 The plaintiff considers that because of his contributions in Italy he had paid at the time when he was subject to the legislation on pension insurance for

craftsmen contributions for more than 216 months so that he was not subject to compulsory insurance during the period when he was a self-employed craftsman.

4 The competent social security institution, the Landesversicherungsanstalt Rheinprovinz, the defendant in the main action, however, takes the view that provisions of Regulation No 1408/71 on the aggregation of insurance periods do not apply in the plaintiff's case. The view of the Landesversicherungsanstalt is that Article 45 of the regulation provides for aggretation of periods only for purposes of the acquisition, retention or recovery of the right to benefits. That rule cannot therefore be applied to determine whether there is compulsory insurance under a particular pension insurance scheme or more particularly to establish whether liability to compulsory insurance has ceased.

In order to decide the matter the Landessozialgericht has put the following two questions to the Court:

(1) Is Article 45 of Regulation (EEC) No 1408/71 of the Council, which governs the taking into consideration of insurance periods completed in other Member States for the acquisition, retention or recovery of the rigth to benefits, also to be applied by analogy to the existence of the obligation to effect social insurance?

(2) When deciding the question of the obligation to insure, which is laid down in the first sentence of Article 1 (1) of the Handwerkerversicherungsgesetz and which ceases to apply only when there are 216 monthly insurance contributions, are Italian contributions also to added to the German insurance contributions or not?

5 The position adopted by the Landesversicherungsanstalt was supported by the Commission before the Court. The Commission argued that the sole objective of Regulation No 1408/71 is to co-ordinate the national legal systems of social security, each of which determines the conditions for affiliation to the various security schemes, including the conditions under which compulsory affiliation ceases. In these circumstances Article 45 of the regulation must be understood as solely determining the effect of insurance periods completed under the various national legal systems and not as laying down the conditions under which compulsory insurance arises or ceases. In

the Commission's view Regulation No 1408/71 contains no provision on this question, the answer to which is exclusively a matter for the appropriate national laws.

6 The Court is of the view that this position is correct. Article 45 of Regulation No 1408/71 contemplates aggregation of insurance periods only for the purpose of the acquisition, retention or recovery of the right to benefits. As such it does not deal with questions relating to affiliation and cessation of affiliation to the various social security schemes, which are matters for the national legal systems alone.

7 The reply to the questions put by the Landessozialgericht should therefore be that Article 45 (1) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons is not applicable so as to determine the existence or non-existence of an obligation to effect insurance laid down by national legislation.

Costs

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

As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step action pending before the Landessozialgericht für das Land Nordrhein-Westfalen, 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 Landessozialgericht für das Land Nordrhein-Westfalen by order of 8 December 1978, hereby rules:

Article 45 (1) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community is not applicable so as to determine the existence or non-existence of an obligation to effect insurance laid down by national legislation.

Kutscher Mackenzie Stuart Pescatore

Sørensen O'Keeffe Touffait Koopmans

Delivered in open court in Luxembourg on 12 July 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 4 JULY 1979 [1]

Mr President,
Members of the Court,

Article 1 (1) of the German Gesetz über eine Rentenversicherung der Handwerker [German Law on insurance of craftsmen] of 8 September 1960 (Bundesgesetzblatt I, p. 737) provides that "where registered craftsmen have paid contributions in respect of a compulsorily insurable occupation or activity for less than 216 calendar months, they

1 — Translated from the German.