

Press and Information Division

PRESS RELEASE No 54/03

19 June 2003

Judgment in Case C-34/02

Sante Pasquini v Istituto Nazionale di Previdenza Sociale (INPS)

**THE COMMUNITY PRINCIPLES OF EQUIVALENCE AND EFFECTIVENESS
REQUIRE THE INPS TO TAKE INTO CONSIDERATION THE PENSIONER'S
GOOD FAITH AND DULY TO REVIEW ONCE A YEAR THE SITUATION OF
EMIGRANT WORKERS IN RECEIPT OF A PENSION.**

The sum which may be recovered may at most amount to the sums overpaid in one year.

Under the Italian pension scheme emigrant workers are entitled to the payment of an advance on their pension, to which is added a further increase to bring the pension up to the level of the minimum pension provided in Italy. Where the person concerned is also entitled to a foreign pension that additional sum can no longer be paid but must be recovered out of the sums paid by the foreign insurance bodies.

In addition, it provides that pensions paid under the general compulsory scheme may, after the person concerned has been informed, at any time be corrected and recovered by the paying authorities, if an error has been committed in respect of the award or payment of the pensions.

Mr Sante Pasquini, who now lives in Luxembourg, worked for 140 weeks in Italy, 336 weeks in France and 1256 weeks in Luxembourg successively.

In 1987, the day before his 60th birthday, he obtained a retirement pension from the Istituto Nazionale della Previdenza Sociale (National Institute of Social Insurance, 'the INPS'), to which was added the further sum in order to bring it up to the level provided for pensions in Italy since at the time he was not yet receiving either a French or Luxembourg pension.

In July 1988 the INPS recalculated the pension awarded and reduced it on account of the award of a French pension *pro rata*.

Again in 1988, the Luxembourg pension fund granted a retirement pension but was late in informing the INPS of it (in November 1999).

In 2000 the INPS, in response to that information, recalculated the Italian pension and reduced it retrospectively with effect from 1 July 1988. In order to offset the sums overpaid (EUR 29 000), the INPS ceased all pension payments.

Mr Pasquini brought an action before the Tribunale di Roma (Rome District Court), Employment Division), challenging the Italian legislation on recovery of sums paid though not due, maintaining that it was incompatible with the Community regulations on the protection of employed persons.

Is a provision of national law which does not lay down any limitation period for the bringing of an action for recovery of sums paid though not due compatible with the Community regulation on social security schemes for workers?¹ Is it possible to apply the period of two years prescribed (by the same regulation) for the retrospective claiming of rights where the regulations have been amended to the advantage of workers?

First, the Court states that the two-year period cannot be applied by analogy, because it relates to transitional provisions intended solely to cover amendments to the regulation.

Then the Court points out that the purpose of the 1971 regulation on social security schemes is to coordinate (not to harmonise) national legislation in that field: in particular, in respect of the calculation of the limitation period for the bringing of actions for the recovery of sums paid though not due it is the national rules of the Member States which are applicable.

As regards a migrant worker's situation, the Member States must, in the exercise of that power, observe Community law and, in particular, the principles of equivalence and effectiveness. Procedures regulating the rights deriving from a freedom conferred by the Treaty may not be less favourable than those laid down for internal situations. They must not make it impossible or excessively difficult to exercise rights conferred by the Treaty.

The Court states that, if there is a rule that sums overpaid as a result of the overlapping of several pensions under internal law may not be reclaimed from a pensioner who has acted in good faith, then that rule must be applied to Mr Pasquini. It notes also that, so far as Italian pensions under various schemes governed by domestic law are concerned, there is a provision of Italian law which requires the INPS to review, once a year, the income received by pensioners and its effect on entitlement to, or the amount of, pension. It concludes that if the INPS had reviewed the pensions granted to migrant workers in accordance with the rules laid

¹ Regulation (EEC) No 1408/71 of 14 June 1971.

down for national schemes, the payment of sums not due would in any event have been limited to a period of one year.

(It is irrelevant that the Luxembourg institution took so long to notify the INPS of the award of its pension: the duty to notify is intended solely to regulate relations between social security institutions; it does not fix the rights of the persons concerned *vis-à-vis* the institutions).

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Languages available: Italian, French, English, Portuguese, German.

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