JUDGMENT OF THE COURT
9 November 1995 *

In Case C-475/93,

REFERENCE to the Court under Article 177 of the EC Treaty by the Sozialgericht Speyer (Germany) for a preliminary ruling in the proceedings pending before that court between

Jean-Louis Thévenon,

Stadt Speyer — Sozialamt

and

Landesversicherungsanstalt Rheinland-Pfalz

on the interpretation of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), and of Articles 48(2) and 51 of the EC Treaty,

* Language of the case: German.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann (Rapporteur), J. L. Murray, P. Jann and H. Ragnemalm, Judges,

Advocate General: G. Cosmas,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of the Economy, and Bernd Kloke, Regierungsrat in that ministry, acting as Agents,

— the Danish Government, by Jørgen Molde, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Spanish Government, by Alberto Navarro González, Director-General for Community Legal and Institutional Coordination, and Miguel Bravo-Ferrer Delgado, Abogado del Estado, of the State Legal Service, acting as Agents,

— the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the United Kingdom, by Stephen Braviner, of the Treasury Solicitor's Department, acting as Agent, and Nicholas Paines, Barrister,

— the Council of the European Union, by Ignacio Díez Parra and Stephan Marquardt, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by Maria Patakia, of its Legal Service, and Horstpeter Kreppel, a German civil servant seconded to the Commission's Legal Service under the exchange scheme for national civil servants, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the German Government, represented by Bernd Kloke, the Spanish Government, represented by Miguel Bravo-Ferrer Delgado, the French Government, represented by Claude Chavance, Secretary for Foreign Affairs in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Anne de Bourgoing, *Chargé de Mission* in that directorate, acting as Agents, the Netherlands Government, represented by J. S. van den Oosterkamp, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, the United Kingdom, represented by Nicholas Paines, the Council, represented by Stephan Marquardt, and the Commission, represented by Horstpeter Kreppel, at the hearing on 17 May 1995,

after hearing the Opinion of the Advocate General at the sitting on 5 July 1995,

gives the following

Judgment

1 By order of 30 November 1993, received at the Court on 20 December 1993, the Sozialgericht Speyer (Social Court, Speyer) referred to the Court for a preliminary

ruling under Article 177 of the EC Treaty a question on the interpretation of Article 6 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), and of Articles 48(2) and 51 of the EC Treaty.

2 That question was raised in proceedings between, on the one hand, Mr Thévenon and the Sozialamt (Social Assistance Office) of the city of Speyer and, on the other, the Landesversicherungsanstalt Rheinland-Pfalz (Rhineland-Palatinate Regional Insurance Office, hereinafter 'the Landesversicherungsanstalt') concerning the calculation of Mr Thévenon's invalidity pension.

3 Mr Thévenon, a French national born in 1950, worked in France from 1964 to 1977, and thereafter in Germany, in employment subject to social insurance.

4 In 1992 Mr Thévenon applied to the Landesversicherungsanstalt for an invalidity pension. This was granted to him on a provisional basis as regards the level of payments, since the extent of the insurance periods completed in France was not yet known.

5 In its capacity as the institution responsible for social assistance, the Sozialamt of the city of Speyer applied for a review of that decision. It argued that the periods completed by Mr Thévenon in France had to be taken into account in calculating his German pension in accordance with the provisions of the general social security convention concluded between the Federal Republic of Germany and the French Republic on 10 July 1950 (hereinafter 'the Franco-German convention'), since that convention had not been denounced.

6 The Landesversicherungsanstalt rejected that application on the ground that the Franco-German convention had been replaced as a result of Article 6 of Regulation No 1408/71, which provides that, as regards persons and matters covered by the regulation, it replaces any social security convention binding two or more Member States exclusively, apart from conventions subject to an express reservation.

7 The Landesversicherungsanstalt consequently calculated Mr Thévenon's pension in accordance with the provisions of Regulation No 1408/71, taking the periods completed in France into account solely for the purposes of completion of the qualifying period and not for the purposes of calculating the amount of the pension.

8 Mr Thévenon and the Sozialamt appealed against that decision to the Sozialgericht Speyer, claiming that the pension should have been calculated in accordance with the provisions of the Franco-German convention, it being more advantageous to the recipient of the pension. They refer in that regard to the judgment of the Court in Case C-227/89 *Rönfeldt* [1991] ECR I-323, in which it was held that Articles 48 and 51 of the Treaty preclude the loss of social security advantages for the workers concerned which would result from the inapplicability, following the entry into force of Regulation No 1408/71, of conventions operating between two or more Member States and incorporated in their national law.

9 It is common ground between the parties to the main action that, if Mr Thévenon's pension were calculated in accordance with the provisions of the Franco-German convention, it would amount to a much higher sum than that granted in accordance with Regulation No 1408/71.

10 In its order for reference, the Sozialgericht states that, in accordance with Article 6 of Regulation No 1408/71, the regulation is applicable to Mr Thévenon, regard

being had to the persons and matters covered thereby. The national court nevertheless considers that the judgment in *Rönfeldt* could preclude the application of the pro rata calculation provided for in Article 46(2) of Regulation No 1408/71, since it is not possible to determine from the wording of that judgment whether it covers only cases in which the potential right to an advantage arose prior to the entry into force of Regulation No 1408/71.

11 In view of those considerations, the Sozialgericht decided to stay the proceedings and referred the following question to the Court for a preliminary ruling:

'Is the application of Regulation (EEC) No 1408/71, which, according to Article 6 thereof, replaces, as regards persons and matters which it covers, conventions binding two Member States exclusively (in this case, the Franco-German Social Insurance Convention of 10 July 1950) with regard to the calculation of pension levels (Article 46(2) of Regulation (EEC) No 1408/71), excluded by Articles 48(2) and 51 of the EC Treaty even in the case where an insured person has, prior to the date of the entry into force of Regulation (EEC) No 1408/71 of 14 June 1971, completed periods of insurance in only one of the signatory States and the application of the undenounced bilateral social insurance convention proves to be more advantageous for the insured person?'

12 It must be observed *in limine* that, according to Article 9 of the Franco-German convention, French or German employees who have been successively or alternately affiliated in the two countries to one or more invalidity insurance schemes are to be credited, for the purposes of calculating the level of invalidity pension, with the insurance periods completed under all such schemes.

13 Article 6 of Regulation No 1408/71, which reproduces in this respect Article 5 of Regulation No 3 of the Council on social security for migrant workers (Journal

Officiel 1958, 30, p. 561), provides that, subject to the provisions of Articles 7, 8 and 46(4), Regulation No 1408/71 is to replace, as regards persons and matters which it covers, the provisions of any social security convention binding two or more Member States. The Franco-German convention is not included amongst the conventions expressly reserved.

14 Regulation No 1408/71 does not provide that contribution periods completed in one or more other Member States are to be added, for the purposes of increasing the amount of the pension, to the contribution periods completed in the Member State in which the pension is applied for. According to that regulation, the periods of insurance completed in different Member States are to be aggregated only for the purposes of the acquisition, retention and recovery of pension rights.

15 Next, the Court stressed in the judgment in Case 82/72 *Walder* [1973] ECR 599, paragraphs 6 and 7, relating to the interpretation of Articles 5 and 6 of Regulation No 3 and Articles 6 and 7 of Regulation No 1408/71, that it is clear from those provisions that the replacement by the Community regulations of the provisions of social security conventions concluded between Member States is mandatory in nature and does not allow of exceptions, save for the cases expressly stipulated by the regulations, even where the social security conventions are more advantageous to the persons covered by them than the Community regulations.

16 The plaintiffs in the main action argue, however, that Mr Thévenon's pension has to be calculated in accordance with the provisions of the Franco-German convention, since the Court held on similar facts in *Rönfeldt* that, in the case of migrant workers, bilateral social security conventions must continue to apply, even after the entry into force of Regulation No 1408/71, where an insured person is thereby placed in a more favourable position.

17 That argument cannot be accepted.

18 It is appropriate, first, briefly to recall the factual and legal circumstances of the *Rönfeldt* case, relating to the application of the provisions of a social security convention between the Kingdom of Denmark and the Federal Republic of Germany, which for the most part were similar to those at issue in this case.

19 Mr Rönfeldt, a German national, had worked initially in Germany from 1941 to 1957 and then in Denmark until 1971, during which periods he had paid contributions to the German and Danish social insurance schemes respectively. From 1971 onwards he worked in Germany and was accordingly subject to compulsory insurance there.

20 When he was about to reach the age of 63, Mr Rönfeldt took steps to obtain early retirement, as is permitted under German legislation. However, he was unable to do so because, according to the Federal Insurance Office for Salaried Employees, contributions paid in Denmark could not be taken into account for the calculation of pension rights in Germany until the applicant had reached the general statutory age-limit under Danish law, namely 67 years.

21 Mr Rönfeldt brought proceedings to annul that decision, arguing that, irrespective of the retirement age laid down by Danish legislation, the contribution periods completed in Denmark had to be taken into account in calculating the German pension. In support of that argument he cited the social insurance convention concluded between the Federal Republic of Germany and the Kingdom of Denmark.

22 At the time of Mr Rönfeldt's return to Germany, the Kingdom of Denmark had not yet joined the European Communities and the convention between the two countries was still in force, having not yet been replaced by Regulation No 1408/71.

23 The Court found in its judgment, first, that the German-Danish convention had been replaced with effect from 1 April 1973 by the rules of Community law contained in Regulation No 1408/71 (paragraph 14) and that the question was therefore whether, and how, Community law required account to be taken of insurance periods completed in Denmark before Regulation No 1408/71 entered into force in that country following its accession to the Communities, for the purpose of granting a retirement pension in some other Member State (paragraph 15).

24 In replying to that question, the Court ruled that Articles 48 and 51 of the Treaty preclude the loss of social security advantages for the workers concerned which would result from the inapplicability, following the entry into force of Regulation No 1408/71, of conventions operating between two or more Member States and incorporated in their national law.

25 However, as argued by the governments and institutions which have submitted observations, that principle cannot apply in factual and legal circumstances such as those obtaining in this case.

26 A worker such as Mr Thévenon, who did not exercise his right to freedom of movement until after the entry into force of Regulation No 1408/71, that is to say, after the Franco-German convention had already been replaced by the regulation as regards persons and matters covered by it, cannot claim to have suffered the loss of social security advantages which he would have enjoyed under the Franco-German convention.

27 Consequently, the particular circumstances which prompted the Court in *Rönfeldt* to allow the exception to the rule laid down by Article 6 of Regulation No 1408/71 are not present in a case such as that which is the subject of the main proceedings.

28 Accordingly, it should be stated in reply to the question from the national court that Articles 48(2) and 51 of the Treaty must be interpreted as meaning that they do not preclude the replacement by Regulation No 1408/71, pursuant to Article 6 thereof, of a convention binding two Member States exclusively where, prior to the entry into force of Regulation No 1408/71, an insured person completed insurance periods in only one of the signatory States, even where the application of the bilateral social security convention would have placed that insured person in a more favourable position.

Costs

29 The costs incurred by the German, Danish, Spanish, French and Netherlands Governments, the United Kingdom, the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Sozialgericht Speyer by order of 30 November 1993, hereby rules:

Articles 48(2) and 51 of the EC Treaty must be interpreted as meaning that they do not preclude the replacement by Regulation (EEC) No 1408/71 of the

Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, pursuant to Article 6 thereof, of a convention binding two Member States exclusively where, prior to the entry into force of Regulation No 1408/71, an insured person completed insurance periods in only one of the signatory States, even where the application of the bilateral social security convention would have placed that insured person in a more favourable position.

Rodríguez Iglesias Kakouris Hirsch

Mancini Schockweiler Moitinho de Almeida

Kapteyn Gulmann Murray

Jann Ragnemalm

Delivered in open court in Luxembourg on 9 November 1995.

R. Grass G. C. Rodríguez Iglesias

Registrar President