JUDGMENT OF THE COURT (Sixth Chamber)
4 October 1991 *

In Case C-349/87

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

Elissavet Paraschi

and

Landesversicherungsanstalt Württemberg

on the interpretation of Articles 48(2) and 51 of the EEC Treaty and on the interpretation and validity of Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (Official Journal 1983 L 230, p. 8),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, T. F. O'Higgins, C. N. Kakouris, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro,
Registrar: V. Di Bucci, Administrator,

after considering the written observations submitted on behalf of:

— Mrs Paraschi, by Hannelore Runft, Assessorin-Juris, Information and Guidance Centre for Greek Migrant Workers,

* Language of the case: German.

— the Landesversicherungsanstalt Württemberg, by Mr Oppenländer, Abteilungsleiter,

— the Council, by John Carbery and Jürgen Huber, Advisers in its Legal Service, acting as Agents,

— the Commission of the European Communities, by Dimitrios Gouloussis, Legal Adviser, and Jürgen Grunwald, a member of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing oral argument presented on behalf of Mrs Paraschi, the Landesversicherungsanstalt Württemberg, represented by Dr Heinz Muschel and Peter Wagner, Administrator and Regierungsdirektor thereof respectively, and the Commission, at the hearing on 30 April 1991,

after hearing the Opinion of the Advocate General at the sitting on 6 June 1991,

gives the following

Judgment

1 By order of 6 October 1987, which was received at the Court on 16 November 1987, the Sozialgericht Stuttgart referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 48(2) and 51 of the EEC Treaty and on the interpretation and validity of Council Regulation (EEC) No 1408/71 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 (Official Journal 1983 L 230, p. 8) with a view to deciding whether the German legislation on occupational invalidity pensions or pensions for incapacity for work was compatible with those provisions.

2 The question was raised in four actions between, on the one hand, Mrs Pougaridou, Mrs Paraschi, Mr Papanikolaou and Mr Portale and, on the other,

the Landesversicherungsanstalt Württemberg (Regional Social Security Office) following the latter's refusal to grant them an invalidity pension.

3 The German rules governing the grant of occupational invalidity pensions and pensions for incapacity for work were amended with effect from 1 January 1984 by the insertion in the Reichsversicherungsordnung (German Social Security Law, hereinafter referred to as 'the RVO') of two new provisions, namely Paragraph 1246(2) and Paragraph 1247(2).

4 That amendment, which made the conditions for the grant of invalidity pensions stricter, may be summarized as follows. Since 1 January 1984, pensions in respect of reduced capacity for work are granted only if the insured person has engaged in an activity which is subject to compulsory insurance and has paid at least 36 monthly contributions within the 60 months before the invalidity arose (the reference period). In determining that period, no account is taken of certain periods, which are listed exhaustively and are known as non-computed periods, which are thus added to and prolong the period of 60 months. Non-computed periods include periods of interruption, inter alia through sickness or unemployment, provided that they gave rise to the payment of benefits or even, under certain circumstances, where they do not do so, and also periods of incapacity for work and unemployment, provided that they do not otherwise have to be taken into account.

5 A transitional system was introduced in order to keep in force until 31 December 1984 the conditions previously applicable to the grant of invalidity pensions, provided that voluntary contributions had been paid at least once a month in the period from 1 January 1984 to 31 December 1984.

6 The application of those rules to migrant workers in Germany gave rise to a number of problems concerning the comparability and similarity of the benefits paid under German law (which are capable of prolonging the 60-month reference period) and the benefits paid under the law of another Member State (which, according to the German insurance institutions, could not prolong the reference period).

7 Since some of the problems raised in the four actions before the national court were subsequently settled as a result of the insertion, by Council Regulation (EEC) No 2332/89 of 18 July 1989 (Official Journal 1989 L 224, p. 1) of an Article 9a in Regulation No 1408/71, with retroactive effect as from 1 January 1984, the Sozialgericht Stuttgart indicated, in an order of 27 March 1990 which was received at the Court on 30 April 1990, that it wished the question referred to the Court to be answered only with respect to Mrs Paraschi's case.

8 It is apparent from the documents before the Court that Mrs Paraschi, a Greek national born in 1943, exercised an activity from 1965 to 1979, with some interruptions, which was subject to compulsory insurance in Germany. She paid a total of 102 monthly pension contributions under the German scheme and five monthly contributions under the Greek scheme. In 1977, Mrs Paraschi fell ill. In July 1979 she left Germany and returned to her country of origin where, because of a deterioration in her health, she was unable to resume employment or, because of the short time for which she had paid Greek pension contributions, to receive an invalidity pension.

9 Two applications for a German invalidity pension, submitted in 1978 and 1980, were rejected by the competent institution on the ground that Mrs Paraschi's capacity to work had not been sufficiently reduced for her to be able to be regarded as an invalid under German legislation. Following a further deterioration in her health, on 16 May 1985 Mrs Paraschi submitted a third application for a German invalidity pension. On that occasion, although it had been established that Mrs Paraschi was, at least temporarily, no longer able to work because of her state of health, the defendant in the main proceedings rejected her application on the ground that she did not fulfil the conditions laid down by the provisions of the RVO described above which had been adopted in the meantime.

10 Mrs Paraschi then appealed to the Sozialgericht Stuttgart against the decision dismissing her application.

11 With a view to deciding that dispute, and the three others mentioned above, the Sozialgericht Stuttgart referred the following question to the Court for a preliminary ruling:

'Is Regulation (EEC) No 1408/71 in conjunction with Paragraphs 1246(2)(a) and 1247(2)(a) of the Reichsversicherungsordnung (RVO) in conformity with Articles 48(2) and 51 of the EEC Treaty?'

12 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

13 It must be observed in the first place that although in proceedings under Article 177 of the Treaty the Court may not rule as to the compatibility of national provisions with Community law, it is nevertheless competent to provide the national court with all the elements of interpretation under Community law to enable it to assess such compatibility for the purpose of deciding the case before it (see, for example, the judgment in Case C-369/89 *ASBL Piageme* v *BVBA Peeters* [1991] ECR I-2971).

14 The question must therefore be understood in the following terms:

(a) Must Articles 48(2) and 51 of the EEC Treaty and Regulation No 1408/71 be interpreted as precluding national legislation which makes the conditions for the grant of an invalidity pension stricter so that in future such a pension will be payable only if the insured person exercised an activity subject to compulsory insurance and paid at least 36 monthly contributions during the period of 60 months preceding the occurrence of the invalidity (reference period), that period being extendable as a result of the occurrence, in the Member State in question, of certain events or circumstances, which are listed exhaustively, whose effect is to interrupt the exercise by a worker of an activity which is subject to compulsory insurance?

(b) If such an amendment to national legislation is not precluded by Regulation No 1408/71, is the latter invalid by virtue of Articles 48(2) and 51 of the EEC Treaty?

The first question

15 The Court has consistently held that Article 51 of the EEC Treaty and Regulation No 1408/71 provide only for the aggregation of insurance periods completed in different Member States and do not regulate the conditions under which those insurance periods are constituted (Case 29/88 *Schmitt* v *Bundesversicherungsanstalt für Angestellte* [1989] ECR 581); the conditions governing the right or obligation to become a member of a social security scheme are a matter to be determined by the legislation of each Member State, provided always that there is no discrimination in that connection between the nationals of the host State and those of other Member States (judgment in Case 110/79 *Coonan* v *Insurance Officer* [1980] ECR 1445).

16 Consequently, Community law does not prevent the national legislature from amending the conditions for the grant of an invalidity pension, even if it makes them stricter, provided that the conditions adopted do not give rise to any overt or disguised discrimination as between Community workers.

17 The determination of a reference period preceding the occurrence of invalidity, in which the insured person must have paid a minimum number of contributions in order to qualify for the grant of an invalidity pension, in itself constitutes an objective criterion which applies in the same way to all Community workers.

18 That finding also applies to the provision made by the national legislature for the possibility of prolonging the reference period, provided always that the detailed rules on which that prolongation depends are not discriminatory.

19 In Mrs Paraschi's view, detailed rules of the kind provided for in the RVO are liable to lead to discrimination against migrant workers who, after being employed

in the Member State of the competent institution, leave it and return to their countries of origin. Such discrimination derives, she maintains, from the different ways in which the social security systems are organized in the Member States, the effect of which is that certain events or circumstances prolong the reference period if they arise in the Member State of the competent institution whereas, if they arise in the worker's State of origin, they cannot be taken into account for the purpose of prolonging the reference period provided for in the legislation of the first-mentioned Member State.

20 Mrs Paraschi refers in particular to periods of sickness or unemployment which, when completed under the conditions envisaged in the German legislation, prolong the reference period even if the worker has not received sickness or unemployment benefits, whereas that possibility does not exist where those events occurred in the worker's State of origin, for example Greece.

21 It must be stated first that Regulation No 1408/71 contains no provisions governing circumstances of the kind at issue in the main proceedings.

22 It must then be pointed out that although, as the Court has held, Article 51 of the Treaty leaves in being differences between the social security systems of the Member States and hence in the rights of the people working there (Case C-227/89 *Rönfeldt* [1991] ECR I-323), it is also settled that the aim of Articles 48 to 51 would not be attained if, as a consequence of the exercise of their right to freedom of movement, workers were to lose the advantages in the field of social security guaranteed to them by the laws of a single Member State; such a consequence might discourage Community workers from exercising their right to freedom of movement and would therefore constitute an obstacle to that freedom (see most recently the judgment in Case C-10/90 *Masgio* [1991] ECR I-1119, paragraph 18).

23 It is apparent from the judgment in Case 1/78 *Kenny* v *Insurance Officer* [1978] ECR 1489, paragraph 17, that that consequence may arise if the national legis-

lature defines the conditions for the acquisition or retention of the right to benefits in such a way that they can in fact be fulfilled only by nationals of the Member State concerned or if it defines the conditions for loss or suspension of the right in such a way that they can in fact be more easily satisfied by nationals of other Member States than by those of the State of the competent institution.

24 Such a situation arises in the case of legislation of the kind at issue in the main proceedings. Even if it applies, formally, to every Community worker and can thus lead to a prolongation of his reference period, nevertheless, in so far as it makes no provision for any possibility of prolongation where events or circumstances corresponding to those which enable the period to be prolonged occur in another Member State, it is liable to have a much greater adverse effect on migrant workers since they above all, particularly in case of sickness or unemployment, tend to return to their countries of origin.

25 Consequently, such legislation has the effect of dissuading migrant workers from exercising their right of free movement.

26 It must be added that the fact that the national legislature provided for transitional rules under which it was possible, in certain circumstances, to maintain the application of the system which operated prior to the legislative amendment in question, does not undermine the above finding.

27 In view of the foregoing considerations, it must be stated in reply to the first question that Articles 48(2) and 51 of the EEC Treaty must be interpreted as not precluding national legislation which makes the conditions for the grant of an invalidity pension stricter so that in future such a pension will be payable only if the insured person exercised an activity subject to compulsory insurance and paid at least 36 monthly contributions during the 60 months preceding the occurrence of the invalidity (reference period). However, those articles preclude such legis-

lation where it permits the reference period to be prolonged, subject to certain conditions, but does not provide for the possibility of a prolongation where events or circumstances corresponding to the events or circumstances which would enable a prolongation to be granted occur in another Member State.

The second question

28 In view of the finding that Regulation No 1408/71 does not govern cases of the type at issue in the main proceedings (paragraph 21 above), it is unnecessary to give an answer to the second question.

Costs

29 The costs incurred by the Commission of the European Communities and the Council of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, so far as the parties to the main proceedings are concerned, in the nature of a step in the actions pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in reply to the question referred to it by the Sozialgericht Stuttgart by orders of 6 October 1987 and 27 March 1990, hereby rules:

Articles 48(2) and 51 of the EEC Treaty must be interpreted as not precluding national legislation which makes the conditions for the grant of an invalidity pension stricter so that in future such a pension will be payable only if the insured person exercised an activity subject to compulsory insurance and paid at least 36 monthly contributions during the 60 months preceding the occurrence of the in-

validity (reference period). However, those articles preclude such legislation where it permits the reference period to be prolonged, subject to certain conditions, but does not provide for the possibility of a prolongation where events or circumstances corresponding to the events or circumstances which would enable a prolongation to be granted occur in another Member State.

Mancini O'Higgins

Kakouris Schockweiler Kapteyn

Delivered in open court in Luxembourg on 4 October 1991.

J.-G. Giraud
Registrar

G. F. Mancini
President of the Sixth Chamber