JUDGMENT OF THE COURT OF 25 JUNE 1975 [1]

Antonio Anselmetti v Caisse de compensation des allocations familiales de l'industrie charbonnière (preliminary ruling requested by the Cour du travail de Bruxelles)

Case 17/75

Summary

Social security — Migrant workers — Family allowances — Payment by the country liable for payment of pension — Combined sickness/invalidity insurance — Cash payments for total or partial incapacity — Nature of pensions
(Regulation No 3 of the Council, Article 42)

Under a combined sickness/invalidity insurance scheme cash benefits paid as invalidity benefits, howsoever designated, must be regarded as pensions within the meaning of Article 42 of Regulation No 3.

In Case 17/75

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

ANTONIO ANSELMETTI

and

CAISSE DE COMPENSATION DES ALLOCATIONS FAMILIALES DE L'INDUSTRIE CHARBONNIÈRE, Brussels,

on the interpretation of Regulation No 3 of the Council of 25 September 1958 concerning social security for migrant workers (OJ of 16. 12. 1958, p. 561),

1 — Language of the Case: French.

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and A. J. Mackenzie Stuart, Presidents of Chambers, A. M. Donner (Rapporteur), R. Monaco, P. Pescatore, H. Kutscher, M. Sørensen and A. O'Keeffe, Judges,

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

gives the following

JUDGMENT

Facts

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 procedure

The plaintiff in the main action, Antonio Anselmetti, of Italian nationality, was employed as a mine-worker in Belgium.

He became ill and was recognized as unfit for work and consequently benefited from the allowances provided by Belgian legislation concerning sickness and invalidity. During the first six months of his incapacity for work he received family allowances at the basic rate for his children resident in Belgium. Then as from the seventh month of his invalidity he was paid family allowance at an increased rate pursuant to Article 40, the third paragraph of Article 50 and Article 56 (2) of the consolidated laws concerning family allowances.

After his return to Italy in 1965 Mr Anselmetti continued to receive there the family allowances at the increased rate pursuant to the bilateral Italo-Belgian Social Security Convention until 16 November 1965 inclusive.

As from 17 November 1965, the Caisse de Compensation des Allocations Familiales de l'Industrie Charbonnière (hereinafter referred to as the 'Caisse de Compensation') on the ground that the children of the person concerned were no longer resident in Belgium and that Regulation No 3 of the Council did not entitle the applicant to family allowances at the increased rate, thereafter paid to him such allowances at the basic rate only. It puts forward the argument that periods of invalidity within the meaning of the Belgian law on sickness/invalidity insurance must be treated as equivalent to periods of work, as the benefits granted to invalids under this insurance constitute mere 'allowances' which may always be withdrawn when the unfitness for work of the insured persons no longer reaches the level laid down by the law, whilst 'pensions' as referred to in Article 42 of Regulation No 3 are undeniably permanent.

The Caisse de Compensation nevertheless recommenced paying Mr Anselmetti

family allowances at the increased rate as from 1 October 1972, the date of entry into force of Regulation EEC 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 (OJ 1971, L 149; OJ (English Special Edition) 1971 (II), p. 416) because this new regulation provides that family allowances may be transferred abroad without reduction or restriction.

Mr Anselmetti considered that the Caisse de Compensation had wrongly reduced for a certain period the amount of family allowances which were due to him under Articles 10 and 42 of Regulation No 3 of the Council and brought his case before Tribunal du Travail (District Labour Court), Charleroi.

His application was unsuccessful and he made an appeal to the Cour du Travail, Brussels, by an application of 18 October 1974.

The Cour du Travail, Brussels, considering that it was faced with a question of interpretation of a Community measure, decided, by a judgment of 20 December 1974 entered in the Registry of the Court of Justice on 11 February 1975, to stay the proceedings and to put the following questions to the Court of Justice of the European Communities for a preliminary ruling in accordance with Article 177 of the EEC Treaty:

1. Do Articles 10 and 42 (the latter as substituted by Regulation No 1/64) of Regulation No 3 in referring to 'beneficiaries of a pension' include migrant workers who are the beneficiaries of what is termed in Belgium 'invalidity allowance' according to the strict wording of Article 53 of the Belgian Law of 9 August 1963 concerning the sickness/invalidity insurance referred to in Annex F to such Regulation No 3?
2. If the answer to Question 1 is in the negative: do the fundamental principles of vested rights and of the free movement of migrant workers, which form the basis of Regulation No 3, render inapplicable the national legislation of a Member State when Articles 40 and 41 of the same regulation apply?

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted for the plaintiff in the main action by Mr D. Rossini, Director of Social Services, for the Government of the Italian Republic by Mr A. Maresca and Mr I. M. Braguglia, acting as Agents, and for the Commission of the European Communities by its Legal Adviser Miss M. J. Jonckzy, acting as Agent.

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 — Written observations lodged with the Court

The *plaintiff in the main action* points out that the Caisse de Compensation whilst denying him the status of a person entitled to a pension, has paid him family allowances on the basis of the provisions of Article 41 of Regulation No 3 of the Council although it should have paid these allowances on the basis of Article 42 (1) as amended by Regulation No 1/64 of the Council of 18 December 1963 (OJ 1964, p. 1). The invalidity allowance paid by Belgian mutual insurance companies within the framework of the general system of sickness/invalidity insurance is an *invalidity benefit* of Type A within the meaning of Article 24 of Regulation No 3, that is to say a benefit granted without reference to the duration of the periods of insurance completed by the worker. Article 42 of the same regulation, which governs the grant of family allowances to persons entitled to pensions makes no distinction between insured persons receiving an invalidity benefit of Type A

and insured persons receiving an invalidity benefit of Type B.

The paying organization, the Institut Nationale d'Assurance Maladie-Invalidité (INAMI) regards the invalidity allowance as an invalidity pension falling under Regulations Nos 3 and 4, especially Articles 26 to 28 and considers that there is no justification for its being given a different classification by the Caisses d'Allocations Familiales.

Since 1 October 1972, the date of entry into force of the new Regulations Nos 1408/71 and 574/72, the invalidity allowance of the general scheme has been classified as a benefit equivalent to an invalidity pension. It would be illogical for the Caisse to regard that allowance as a pension as from 1 October 1972 and as a temporary incapacity allowance until 30 September 1972, when no new provision of Belgian law has given a different classification to that benefit.

As the grant of family allowances is directly linked to the enjoyment of the pension or of the invalidity allowance, these allowances cannot be subject in case of the transfer of the residence of the beneficiary to any reduction by virtue of Article 10 of Regulation No 3.

In support of its argument the plaintiff relies on the judgment of the Court of Justice of 7 November 1973 in Case 51/73 Sociale Verzekeringsbank v Smieja [1973] ECR 1213. The provisions of Article 10 of Regulation No 3 have a general scope and ensure the full enjoyment of pensions and related benefits acquired under the legislation of one or several Member States whatever the place of residence of the holder.

As the reply to the first question is in the affirmative there is no need to reply to the second question raised by the Cour du Travail.

The *Italian Government* refers to the case-law of the Court of Justice: the judgment of 22 June 1972 in Case 1/72 *Frilli v Belgian State,* (Rec. 1972, p. 457) and the judgment of 9 October 1974 in Case 24/74 *Caisse Régionale d'Assurances maladie de Paris v Giuseppina Biason* ([1974] ECR 999) according to which the terms 'benefits' and 'pensions' defined in Article 1 (s) of Regulation No 3 must be understood *in the widest possible sense:* as including all fractions thereof chargeable to public funds.

It must be deduced from the case-law that among such beneficiaries of a pension are mentioned in Article 42 of Regulation No 3 must also appear beneficiaries of an invalidity benefit. A different conclusion would furthermore be contrary to the prohibition of discrimination set out in Article 10 of Regulation No 3 and made clear by the Court of Justice in judgment 24/74, mentioned above. Among the beneficiaries of pensions mentioned in Article 42 and in Article 10 of Regulation No 3 appear the persons entitled to invalidity allowances, the nature of which as a social security measure is not even discussed. Consequently family allowances must be paid to the persons entitled to the invalidity benefits indicated in accordance with the rates laid down by the legislation of the country liable for payment, even if the dependent children reside in another Member State.

No other conclusion would be reached even if the special nature of Belgian legislation concerning invalidity as a prolonged illness during which an 'allowance' calculated as a percentage of the salary previously earned is paid. The invalidity benefit is termed an 'allowance' during the whole period when it is paid until old-age: it is then replaced by the corresponding pension. Furthermore, periods of unfitness for work because of invalidity are assimilated to periods at work for the purpose of fulfilling the conditions required by the old-age pension, granted according to the work

done during a reference period and earnings received.

Despite these characteristics and taking account also of the revocable nature of the allowance in question it does not appear that the Belgian invalidity allowance is different in character from the invalidity pension. The latter in fact whether it refers to the primary period of incapacity or to the extended period of incapacity or to successive periods has in any case the purpose of compensating for the loss of capacity to work, a function fulfilled in the other Member States by the payment of an invalidity pension.

An affirmative reply to the first question would render unnecessary the examination of the second question put by the national court.

As a subsidiary matter the Italian Government mentions that the concept of 'social advantages' within the meaning of Article 7 (2) of Regulation No 1612 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ 1968, L 257; OJ (English Special Edition) 1968 (II), p. 475) includes also social security measures and facilities which workers may enjoy after the ending of their service as employed persons. If however the invalidity allowance established by the Belgian national law in question were to be regarded as not coming within the framework of Regulation No 3 for the purpose of the granting of family allowances, the said allowance would undoubtedly put a 'social advantage', within the meaning of Article 7 (2) mentioned above, into concrete form, and consequently prohibit discrimination on the ground of nationality or of residence. The prohibition of discrimination would extend also to the granting of family allowances, as representing among other things a right belonging to the worker.

The *Commission* states that the essential problem in the present case is to determine whether the recipient of an invalidity allowance under the Belgian Law of 9 August 1963 on sickness/invalidity insurance (Pasinomie, 1963, Volume II, p. 1067) is a beneficiary of a pension, within the meaning of Article 42 of Regulation No 3 as amended by Regulation No 1/64 or whether he should be regarded as a wage-earner whose work has been interrupted for a certain time because of incapacity to work and who is in receipt of benefits designated as invalidity allowances.

In order to examine this question the Commission gives first of all certain details concerning the above-mentioned Belgian Law, which makes provision for three types of allowances for incapacity for work:

- the primary incapacity allowance, paid during a period of one year;
- the extended incapacity allowance paid during a period of two years starting at the expiration of the period of primary incapacity;
- the invalidity allowance paid as from the fourth year of incapacity for work until the age as from which those concerned can claim an old-age pension, except of course where the state of invalidity ceases meanwhile.

As from the payment of the invalidity allowance, Belgian legislation grants family allowances at a higher rate.

One might conclude that this change in the payment of family allowances at the time of the change from the incapacity allowance to the invalidity allowance would in itself imply a change in the character of that allowance and that there would be a change from sickness allowances to payments termed allowances or pensions.

In the present case, the person concerned had a right immediately after the primary incapacity allowance to the

invalidity allowance. It must be supposed that this was by virtue of Article 146 of the Law of 1963, which specifies that for the application of the provisions of the international social security conventions in force in Belgium the extended allowance must be regarded as an invalidity allowance.

Furthermore, Mr Anselmetti received the primary incapacity allowance only for six months, and not for a year as laid down by the Law of 1963. In fact under the third subparagraph of Article 46 of that Law for 'persons who may claim the *invalidity pension* under the legislation on the retirement scheme for mine workers, *the right to the primary incapacity allowance expires at the end of the sixth month of incapacity for work*!

In the present case the problem is solved as the person concerned in his capacity as a former miner is certainly a 'person in receipt of pension'.

The Commission continues the examination of the question raised by the Cour du Travail to decide whether, for the application of Article 42 of Regulation No 3, an invalidity allowance provided for by the legislation of a Member State is or is not a pension.

It disputes the argument of the Caisse de Compensation that the invalidity allowance has not the characteristics of a pension because it is compensatory and revocable. In the Commission's view all social security is by definition of a compensatory nature and furthermore, the fact that a payment is termed a pension does not thereby imply that it is of a permanent nature. For example widows' pensions paid so long as the widow does not remarry are none the less survivors' pensions mentioned expressly in Chapter 3 of Regulation No 3 concerning pensions. The fact that a change in circumstances leads to the ending of the periodical payment of a benefit, does not mean that such benefit is not a pension. The reason for which that pension is no longer paid is that the conditions on which the pension was initially granted are no longer fulfilled.

There are cases where pensions are irrevocable, for example the old-age pension or the pension granted following an industrial accident. In these cases the irrevocability is not due to the nature of the benefit but to the irrevocable nature of the circumstance, age or accident, giving rise to the pension.

A distinction may be drawn here between long-term payments and short-term payments, the latter ending after a fixed period. In the majority of cases of sickness insurance, the payment at the end of the fixed period is converted into an invalidity pension. It appears consequently that the essential characteristic of a pension is that it be permanent as long as the circumstances which led to its being granted remain unaltered.

Annex F to Regulation No 3, to which reference is made in the present question on which a preliminary ruling is sought, specifies whether the legislation of the Member States concerning invalidity payments is of Type A or B, as defined in Article 24 (1) of Regulation No 3. It cannot be deduced from the wording of Article 24, which mentions only payments under the heading 'Invalidity', that Regulation No 3 contains no provisions for invalidity pensions. Such a restrictive interpretation would exclude the application of Regulation No 3 to the legislation of the Member States providing expressly for invalidity pensions and that would be contrary to the very spirit of Article 51 of the Treaty, which moreover mentions only benefits. This expression 'benefit' must be understood in a generic sense as including both benefits as such and pensions. It may well be that an allowance mentioned as such in the regulation system is not a pension within the meaning of Articles 10 and 42 of

Regulation No 3. The invalidity allowance provided for by the Belgian legislation, being undeniably a permanent benefit as long as the beneficiary fulfils the conditions which obtained for the grant of the said benefit, is a pension.

As the reply to the first question is affirmative, the second question raised by the Cour du Travail has lost its purpose.

III — Oral procedure

The plaintiff in the main action, represented by Mr D. Rossini, Director of Social Services and the Commission of the European Communities represented by its Legal Adviser Miss M. J. Jonckzy, acting as Agent, presented oral argument at the hearing on 26 May 1975.

The Advocate-General delivered his opinion at the hearing on 18 June 1975.

Law

1 By a judgment of 20 December 1974, which reached the Registry on 11 February 1975 the Cour du Travail, Brussels, under Article 177 of the EEC Treaty referred to the Court of Justice two questions of interpretation concerning Articles 10 and 40 to 42 of Regulation No 3 (OJ 1958, p. 561).

2 These questions concern the right to family allowances of a worker of Italian nationality, who, having worked and resided with his family in Belgium until 1965, returned at the end of that year to Italy having stopped work because of illness from December 1963 and having been accepted as incapable of working within the meaning of the Belgian scheme of sickness/invalidity insurance.

3 The first question asks whether Articles 10 and 42 of Regulation No 3 include 'migrant workers who are the beneficiaries of what is termed in Belgium "invalidity allowance" according to the strict wording of Article 53 of the Belgian Law of 9 August 1963 concerning sickness/invalidity insurance referred to in Annex F to such Regulation No 3'.

4 According to the wording of Article 42 as amended by Regulation No 1/64 (OJ 1964, p. 1), 'Beneficiaries of a pension due in pursuance of the legislation of one Member State only, and who permanently reside in the territory of another Member State, are entitled to family allowances in accordance with the provisions of the legislation of the country liable for payment of the pension as though they were permanently resident in that country'.

5 The national court asks whether that provision is applicable in the present case in preference to Article 40 of the same regulation which, as amended by

Regulation No 73/63 (OJ 1963, p. 2011), provides that 'a wage-earner or assimilated worker who has children who are permanently resident or are being brought up in the territory of a Member State other than the competent country shall be entitled, in respect of the said children, to family allowances in accordance with the legislation of the Member State in whose territory such children permanently reside or are being brought up'.

6 The two provisions however concern clearly different situations, Article 40 applying to an employed worker whose children reside elsewhere probably in his country of origin, whilst Article 42 applies to a worker who is the recipient of a pension, has ceased employment and has changed his place of residence, probably also to his country of origin.

7 The question is one of determining which of these two provisions applies in the case of persons subject to legislation such as the Belgian legislation which has abandoned the distinction, still retained by Regulation No 3, between, on the one hand, benefits of a temporary character granted, particularly in case of sickness, to employed workers who have had to interrupt their work and, on the other hand, permanent benefits granted under the name of pensions to workers who have had to cease work because of old-age or invalidity.

8 Such legislative systems have, for social reasons, organized sickness insurance and invalidity insurance within a single scheme so that a worker who has become incapable of working first comes under a scheme concerning temporary incapacity and only after a certain period of time does he become subject to a scheme intended to cover total or partial incapacity which is of long duration if not permanent.

9 Under such legislative systems cash benefits granted unter whatever name to a worker whose total or partial incapacity to work shows a tendency to become stabilized must be regarded as pensions within the meaning of Article 42 even if the incapacity is not permanent, the pensions mainly envisaged by this article being sometimes themselves subject to review.

10 In the case of a migrant worker, as soon as the stage is reached at which, in accordance with the rules of the sickness/invalidity insurance the system of temporary incapacity benefits is replaced by the system of invalidity benefits, it is appropriate to regard Article 42 as being applicable to him if he changes his residence and that of his family to another Member State.

11 Furthermore even in the case of transfer of residence before this stage the worker would retain his rights to family allowances under Article 19 (6) so long as the transfer were carried out in accordance with the conditions laid down in Article 19 (2).

12 It is therefore appropriate to reply, without its being necessary for the Court to go into the details of the Belgian Law to which the national court refers, that under a combined sickness/invalidity insurance scheme cash benefits paid as invalidity benefits, howsoever designated, must be regarded as pensions within the meaning of Article 42 of Regulation No 3.

13 As the second question has been raised only in the case of a negative reply to the first, it does not call for consideration.

Costs

14 The costs incurred by the Government of the Italian Republic and the Commission of the European Communities which submitted their observations to the Court are not recoverable.

15 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Cour du Travail, Brussels, 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 Cour du Travail, Brussels, in its judgment of 20 December 1974 hereby rules:

Under a combined sickness/invalidity insurance scheme cash benefits paid as invalidity benefits, howsoever designated, must

be regarded as pensions within the meaning of Article 42 of Regulation No 3.

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco

Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 25 June 1975.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 18 JUNE 1975 [1]

Mr President,
Members of the Court,

Mr Anselmetti, the plaintiff in the proceedings which have given rise to the reference with which I have to deal today is an Italian national. From 1958 onwards he worked in Belgium, apparently as a miner, and resided in that Member State together with his family. In December 1963 Mr Anselmetti became ill; since then he has been recognized as unfit for work. He therefore receives an invalidity allowance under the provisions of Belgian law into which I will go in more detail later.

In addition he draws a family allowance under Belgian law, and this is the main issue in the present case. At first it was only at the basic rate but after a certain time the increased rate was applied. This continued until November 1965 when Mr Anselmetti returned with his family to Italy where he now has his permanent residence. From this time on the Belgian family allowance was once again paid at the basic rate. This was done in accordance with Article 40 of Regulation No 3 concerning social security for migrant workers which provides:

'A wage-earner who ... has children who are permanently resident or are being brought up in the territory of another Member State, shall be entitled, in respect of such children, to family allowances according to the provisions of the legislation of the former State, up to the amount of the allowances granted under the legislation of the latter State'.

The increased rate was not re-applied until 1 October 1972, the date on which

1 — Translated from the German.