



Reports of Cases

Case C-187/15

Joachim Pöpperl

v

Land Nordrhein-Westfalen

(Request for a preliminary ruling
from the Verwaltungsgericht Düsseldorf)

(Reference for a preliminary ruling — Article 45 TFEU — Freedom of movement for workers — Civil servant of a Member State who has left the public service in order to be employed in another Member State — National legislation providing in that case for loss of the retirement pension rights acquired in the civil service and for retrospective insurance under the general old-age insurance scheme)

Summary — Judgment of the Court (First Chamber), 13 July 2016

1. *Freedom of movement for persons — Workers — Equal treatment — Social advantages — National legislation providing that a civil servant who has left the public service of a Member State in order to be employed in another Member State loses pension rights — Unlawful*

(Art. 45 TFEU)

2. *Freedom of movement for persons — Workers — Provisions of the Treaty — Obligations of national courts — Obligation to interpret national law in conformity with EU law — National legislation providing that a civil servant who has left the public service of a Member State in order to be employed in another Member State loses pension rights*

(Art. 45 TFEU)

1. Article 45 TFEU must be interpreted as precluding national legislation under which a person having the status of civil servant in a Member State who leaves his post voluntarily in order to be employed in another Member State loses his retirement pension rights under the retirement pension scheme for civil servants and is insured retrospectively under the general old-age insurance scheme, conferring entitlement to a retirement pension lower than the retirement pension that would result from those rights. Such legislation constitutes a restriction on freedom of movement for workers since, even if it also applies to civil servants of that Member State who resign in order to work in the private sector in the same Member State, it is liable to prevent or deter them from leaving their Member State of origin to take up employment in another Member State. That legislation thus directly affects the access of civil servants of the Member State concerned to the employment market in Member States other than that concerned and is thus such as to impede freedom of movement for workers

While EU primary law admittedly can offer no guarantee to an insured person that moving to a Member State other than his Member State of origin will be neutral in terms of social security, in particular where sickness benefits and old-age pensions are concerned, since, given the disparities

between the Member States' social security schemes and legislation, such a move may be to the advantage of the person concerned in terms of social protection, or not, depending on the circumstances, where the application of national legislation is less favourable the latter is consistent with EU law only to the extent that, in particular, it does not place the worker concerned at a disadvantage compared with those who pursue all their activities in the Member State where it applies and does not purely and simply result in the payment of social security contributions on which there is no return.

(see paras 24, 28, 41, operative part 1)

2. Article 45 TFEU must be interpreted as meaning that is incumbent on the national court to give full effect to that article and to grant workers, in a situation where national legislation provides for pension rights to be lost by a civil servant who has left his post in order to be employed in another Member State, retirement pension rights which are comparable to those of the civil servants who retain retirement pension rights corresponding, despite a change in public-sector employer, to the years of pensionable service that they have completed, by interpreting domestic law in conformity with that article or, if such an interpretation is not possible, by disapplying any contrary provision of domestic law in order to apply the same arrangements as those applicable to those civil servants. In this connection, where national law, in breach of EU law, provides that a number of groups of persons are to be treated differently, the members of the group placed at a disadvantage must be treated in the same way and made subject to the same arrangements as the other persons concerned. The arrangements applicable to members of the group placed at an advantage remain, for want of the correct application of EU law, the only valid point of reference.

(see paras 46, 49, operative part 2)