

# Joined Cases C-396/05, C-419/05 and C-450/05

**Doris Habelt and Others**

**v**

**Deutsche Rentenversicherung Bund**

(References for a preliminary ruling from the Sozialgericht Berlin and the  
Landessozialgericht Berlin-Brandenburg)

(Social security — Regulation (EEC) No 1408/71 — Annexes III and VI — Freedom  
of movement for persons — Articles 18 EC, 39 EC and 42 EC — Old-age benefits —  
Periods of contribution completed outside the Federal Republic of Germany — Not  
exportable)

Opinion of Advocate General Trstenjak delivered on 28 June 2007 . . . . . I - 11900  
Judgment of the Court (Grand Chamber), 18 December 2007 . . . . . I - 11948

## Summary of the Judgment

1. *Social security for migrant workers — Community legislation — Substantive scope — Old-age or survivors' benefits*  
(Council Regulation No 1408/71, Art. 4(1)(c) and (d), and (4))

2. *Social security for migrant workers — Old-age benefits — Particular rules of German legislation*  
(Arts 18 EC, 39 EC and 42 EC; Council Regulation No 1408/71, Art. 4(1) and Annex VI, C, point 1)
3. *Social security for migrant workers — Community legislation — Substantive scope — Old-age or survivors' benefits*  
(Council Regulation No 1408/71, Art. 4(1)(c) and (d))
4. *Social security for migrant workers — Community legislation — Substitution for social security conventions between Member States — Limits*  
(Arts 39 EC and 42 EC; Council Regulation No 1408/71, Annex III, A and B, point 35, (e))
5. *Social security for migrant workers — Old-age benefits — Particular rules of German legislation*  
(Art. 42 EC; Council Regulation No 1408/71, Art. 4(1), and Annex VI, C, point 1)

1. A benefit may be regarded as a social security benefit in so far as it is granted to the recipients, without any individual and discretionary assessment of personal needs, on the basis of a legally defined position and relates to one of the risks expressly listed in Article 4(1) of Regulation No 1408/71.

Regarding German retirement pensions based initially on contribution periods completed by the persons concerned in parts of the territory where the social security legislation of the German Reich applied during the periods concerned

but which are outside the territory of the Federal Republic of Germany, those contribution periods are recognised as such not because of the war but because contributions were paid under German legislation on old-age insurance. Those benefits are financed, like pensions based on periods completed on the territory of the present Federal Republic of Germany, by contributions from insured persons who are currently working. Moreover, the payment of such benefits to recipients living outside the territory of the Federal Republic of Germany is not discretionary, if only to the extent that the statutory pension insurance scheme provides that pensions based on contribution periods completed in the parts of the territory where the social security legislation of the German Reich was applicable are, generally, paid abroad when those entitled were born before 19 May 1950 and took up habitual residence abroad before 19 May 1990. Consequently, such benefits must, in view of their character-

istics, be regarded as old-age and survivors' benefits within the meaning of Article 4(1)(c) and (d) of Regulation No 1408/71.

(see paras 63, 66, 67, 69)

2. The provisions of Annex VI, Part C, headed 'Germany', point 1, to Regulation No 1408/71 are incompatible with freedom of movement for persons, and in particular, with Article 42 EC, in that they make it possible to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed between 1937 and 1945 on the parts of the territory where the social security legislation of the German Reich was applicable, but which are outside the territory of the Federal Republic of Germany, subject to the condition that the recipient reside in that Member State.

The provisions of Regulation No 1408/71 which are designed to

ensure that social security benefits are payable by the competent State, even where the insured, who has worked exclusively in his State of origin, resides in or transfers his residence to another Member State, undoubtedly help to ensure freedom of movement not only for workers, under Article 39 EC, but also for citizens of the Union, within the European Community, under Article 18 EC. Thus, the refusal of the German authorities to take account, for the purposes of calculating old-age benefits, of the contributions made by the persons concerned during the periods in question makes manifestly more difficult or even prevents the exercise by those concerned of their right to freedom of movement within the Union and therefore constitutes an obstacle to that freedom.

As regards the special non-contributory benefits mentioned in Annex IIa to Regulation No 1408/71, it is permissible for the Community legislature to adopt, in the course of implementation of Article 42 EC, provisions derogating from the principle of the exportability of social security benefits. In particular, the grant of benefits closely linked with the social environment may be made subject to a condition of residence in the State of the competent institution. That is clearly not the case with social security benefits which fall within Article 4(1) of Regulation No 1408/71, which do not appear to be linked to the characteristic social environment of the Member State which introduced them and thus liable to be made subject to a condition of residence. In those circumstances, to

allow the competent Member State to rely on grounds of integration into the social environment of that State in order to impose a residence clause would run directly counter to the fundamental objective of the Union which is to encourage the movement of persons within the Union and their integration into the society of other Member States.

position and relates to one of the risks expressly listed in Article 4(1) of Regulation No 1408/71.

Moreover, even if a risk of seriously undermining the financial balance of the social security system may justify such obstacles, the German Government has failed to demonstrate how transfers of residence from Germany are liable to impose a heavier financial burden on the German social security scheme.

Concerning benefits based on contribution periods under the German law on pension rights acquired by contribution abroad (*Fremdrentengesetz*, 'FRG'), the purpose of that law is to integrate insured persons who have completed periods of contribution under that law in the German statutory pension insurance scheme, such insured persons being deemed to have completed those periods of insurance in Germany. Moreover, although there are situations in which the benefits paid under the FRG may be regarded as being intended to alleviate difficult situations arising from events connected with the National Socialist regime and the Second World War, that is not the case in a situation such as that at issue in the main proceedings. In addition, the payment of the said benefits to recipients who do not reside on the territory of the Federal Republic of Germany is not discretionary if only in so far as the statutory pension insurance scheme provides that pensions deriving from periods of contribution under the FRG are, as a general rule, paid abroad where the beneficiaries were born before 19 May 1950 and acquired their normal

(see paras 78, 79, 81-83, 85,  
operative part 1)

3. A benefit may be regarded as a social security benefit in so far as it is granted to the recipients, without any individual and discretionary assessment of personal needs, on the basis of a legally defined

place of residence abroad prior to 19 May 1990. Accordingly, the said benefits must, in the light of their characteristics, be regarded as old-age and survivors' benefits within the meaning of Article 4(1)(c) and (d) of Regulation No 1408/71.

(see paras 107, 110-112, 114)

Provisions of Community law may apply to professional activities pursued outside Community territory as long as the employment relationship retains a sufficiently close link with the Community. That principle must be deemed to extend also to cases in which there is a sufficiently close link between the employment relationship, on the one hand, and the law of a Member State and thus the relevant rules of Community law, on the other.

4. The loss, pursuant to Annex III, Parts A and B, point 35(e) to Regulation No 1408/71 and the social security convention concluded between the Federal Republic of Germany and the Republic of Austria on 4 October 1995, of the right to old-age benefits arising from the social security convention concluded between those States on 22 December 1966, where the person concerned settled in Austria before the entry into force of Regulation No 1408/71 in that Member State, breaches Articles 39 EC and 42 EC. Therefore, the said provisions of Regulation No 1408/71 and the German-Austrian convention of 1995 are incompatible with Article 39 EC and Article 42 EC in that they make it possible, in circumstances where the recipient resides in Austria, to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed under the FRG between 1953 and 1970 in Romania subject to the condition that the recipient reside in the territory of the Federal Republic of Germany.

(see paras 122, 124, 125, operative part 2)

5. The provisions of Annex VI, Part C, headed 'Germany', point 1, to Regulation No 1408/71, as amended, are incompatible with freedom of movement for persons and, in particular, with Article 42 EC, in that they make it possible to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed under the FRG between 1953 and 1970 in Romania subject to the condition that the recipient reside in the territory of the Federal Republic of Germany.

(see para. 129, operative part 3)