

JUDGMENT OF THE COURT
14 APRIL 1970¹

Bundeskknappschaft
v Elisabeth Brock²
(Reference for a preliminary ruling
by the Bundessozialgericht Kassel)

Case 68/69²

Summary

1. *Measures adopted by Community institutions — Amendment of an earlier provision — Situations arising under the latter — Future effects — Application of the amending rule*
2. *Social security for migrant workers. — German legislation — Application to pensions falling due with effect from 1 January 1964 (Regulation No 3, Annex G/I - B, (1) Regulation EEC No 130/63, Article 6)*
3. *Social security for migrant workers — Pensions — Automatic review under national law — Permissibility — Procedures (Regulation No 3, Article 53)*

1. Amending legislation applies, except where otherwise provided, to the effects in the future of situations which have arisen under the law as it stood before amendment.
2. The procedure introduced by paragraph (1) of Annex G/I-B to Regulation No 3, as amended by Article 6 of Regulation EEC No 130/63, applies to pensions and arrears of pensions which have fallen due as from 1 January 1964, even if these pensions are paid in respect of risks which materialized before that date.
3. Both in its new and previous versions Regulation No 3 provides for a review of pensions only at the request of the persons concerned. There is, however, nothing in Community rules to prevent an automatic review under national law, if its provisions are more favourable to insured persons. In such circumstances it is for the national legislative system to determine the effects of this more favourable treatment without however adversely affecting the rights which the insured person derives directly from Regulation No 3.

In Case 68/69

Reference to the Court under Article 177 of the EEC Treaty by the Bundessozialgericht, Kassel, for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

2 — CMLR.

BUNDESKNAPPSCHAFT, Bochum,

and

ELISABETH BROCK, 24, Harsefelder Straße, Stade, on the interpretation of certain provisions of Regulation No 3 of the Council of the EEC of 25 September 1968.

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner, A. Trabucchi, W. Strauß and J. Mertens de Wilmars (Rapporteur), Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts of the case may be summarized as follows:

A mine-worker's pension in Germany is determined according to the number of contribution periods.

To these actual contribution periods other periods may be added which in certain circumstances are also taken into account in determining the amount of the pension. This is done in the case of 'Ausfallzeiten' ('interrupted periods') which according to Articles 56 and 57 of the Reichsknappschaftsgesetz (the Law relating to the Federal Mineworkers' Association) are periods during which as a result of sickness,

injury or other circumstances mentioned in the said Article 57 insurable employment has been interrupted.

In order that these interrupted periods may be taken into account the person concerned must however have paid contributions for at least one half of the period from the date of affiliation to the insurance scheme to the date of the event giving rise to the pension (Halbdeckung) (50 per cent cover) and for at least 60 months.

It was impossible to decide whether Regulation No 3 of the Council of 25 September 1958 (OJ of 16.12.1958, p. 561) before it was amended by Regulation No 130/63 of 18 December 1963 (OJ of 28.12.1963, p. 2998) permitted contribution

periods completed in another Member State to be taken into account in order to comply with the condition mentioned above. On the other hand Article 6 (1) of Regulation No 130/63 which amends Part B of Annex G to Regulation No 3 provides that:

'In order to determine whether contribution periods which under German law are treated as interrupted periods (Ausfallszeiten) or supplementary periods (Zurechnungszeiten) must be taken into account as such, contributions paid under the law of another Member State and affiliation to a pensions insurance scheme of another Member State shall be assimilated to contributions paid under German law and to affiliation to a German pensions insurance scheme'.

Paragraph (2) of this article states however that the amendment of Part B takes effect on the first day of the month following the date when this regulation entered into force, that is to say, 1 January 1964.

Mr Brock, whose pension rights pass to his widow, the respondent in the proceedings before the Bundessozialgericht (the Federal Social Court) worked in the Netherlands from 1927 to 1933 and after this date mainly in Germany as a mineworker.

On 3 December 1959 he was granted an invalidity pension with effect from 1 December 1958 which was converted into an old-age pension when he attained the age of 65 years.

Between Mrs Brock and the Mineworkers' Association of Aachen which was responsible for the payment of the pension, there arose a dispute which in the first instance was mainly concerned with the question whether the payment of contributions in the Netherlands during Mr Brock's period of employment in that country was to be assimilated to the payment of contributions in Germany in order to determine whether he complied with the condition precedent for taking these interrupted periods into account.

As this question had been settled by the amendment to Part B of Annex G by Regulation No 130/63 which provided that contribution periods completed in the Netherlands could be taken into account,

the later stages of the proceedings were directed to the question whether the amendment of Part B of Annex G applied, as maintained by the Knappschaft (Mineworker's Association), to pensions which have their origin in a risk which materialized after 1 January 1964 or whether, as Mrs Brock submits, it must apply to pensions and arrears of pension payable with effect from 1 January 1964 even if the risk materialized before that date.

By its judgment of 16 August 1966 the Landessozialgericht (the Higher Social Court) of Lower Saxony decided that contribution periods completed in the Netherlands were to be taken into account with effect from 1 January 1964 in order to determine whether Mr Brock had complied with the condition that he must have paid contributions during one half of the insurance period stipulated by paragraph (2) of Article 56 of the Reichsknappschaftsgesetz.

The Bundesknappschaft, the successor in title to the Knappschaft of Aachen, lodged an appeal against this decision with the Bundessozialgericht.

It maintains that, since the relevant provision of Regulation No 130/63 of the EEC only entered into force on 1 January 1964, the insurance periods completed abroad cannot be taken into account in respect of risks which materialized before that date. The events which give rise to a right under a new law, but which were concluded before this law entered into force, do not come within the amendment to the previous law, unless the new law expressly so provides or it is possible to deduce from the *ratio* of this new law that the events in question fall within its field of application. In social insurance law the determinative criterion for deciding whether to apply the old or the new is generally the materialization of the risk and the principle to be applied in this case that the rights arising from the materialization of the risk before the entry into force of the new law are governed by the provisions applicable at that time. In the present case, however, the risk the materialization of which gave rise to the right to an old-age pension materialized in July 1959.

The Bundesknappschaft goes on to argue

that Article 53 (4) of Regulation No 3 cannot be invoked. This provision can only refer to cases which were settled before the entry into force of Regulation No 3, that is to say, before 1 January 1959. However, the first decision relating to the insured person's pension was only taken on 3 December 1959. On the other hand it is clear from the wording of Article 6 (2) of Regulation No 130/63 that the amendment to Part I of Head of Annex G to Regulation No 3 only refers to cases subsequent to 1 January 1964, whereas the other amendments to Annex G on the other hand have retroactive effect as from 1 January 1959. If the intention of the legislature had been different there would have been no need to provide in Article 6 (2) of Regulation No 130/63 (EEC) that the amendment to Part I of Head B of Annex G but not to the other provisions would enter into force as from 1 January 1964.

The Bundesknappschaft therefore asked the Bundessozialgericht to annul the contested judgment and to dismiss Mrs Brock's application. By an order of 30 October 1969 the Bundessozialgericht stayed the proceedings and referred to the Court under Article 177 of the EEC Treaty the following questions for a preliminary ruling:

1. Does the procedure adopted by paragraph (1) of Annex G/I-B to Regulation No 3 as amended by Article 5 of Regulation EEC No 130/63 also apply to pensions within the meaning of Regulation No 3 paid in respect of risks which materialized before this amendment entered into force (1 January 1964)?
2. If so, are these pensions to be reviewed automatically or only at the request of the person concerned and from what date?

The order for reference was lodged at the Court on 24 November 1969.

The Commission of the European Communities, the Federal Republic of Germany and Mrs Elisabeth Brock lodged their written observations in conformity with Article 20 of the Protocol on the Statute of the Court of Justice.

After hearing the report of the Judge-

Rapporteur and the views of the Advocate-General, the Court decided that no preparatory inquiry was necessary.

The Commission of the European Communities presented oral argument at the hearing on 3 March 1970.

The opinion of the Advocate-General was delivered on 11 March 1970.

II — Observations of the parties submitted pursuant to Article 20 of the Protocol

A — *Mrs Brock's observations*

Mrs Brock states that she accepts without any reservation the decision of the Landes-sozialgericht of Lower Saxony and refers to the grounds upon which it is based.

B — *Observations of the Commission of the European Communities and of the Federal Republic of Germany*

1 — The first question

The *Commission* takes the view that the provision in the first paragraph of Head B of Part I of Annex G to Regulation No 3 to the effect that contributions paid in other Member States are to be taken into account must also apply to pensions payable in respect of risks which materialized before 1 January 1964.

It makes the following submissions on this point.

Whereas all the other amendments made by Regulation No 130/63 to Annex G/I-B took effect from 1 January 1959 (that is to say, retroactively from the date when Regulation No 3 entered into force), Article 6 (2) of this regulation provides that amendments to the first paragraph of Head B shall only take effect on the first day of the month following the date when Regulation No 130/63 entered into force, that is, on 1 January 1964.

This provision, however, does not preclude the application of the amended text to events giving rise to the obligation to pay a pension (invalidity or old-age) which occurred before 1 January 1964.

(i) Under the case-law of the Court (OJ of

9.12.1965, Case 44/65, *Hessische Knappschaft v Singer* [1965] E.C.R. 972) in the absence of an express provision to the contrary, and there is none in this case, a new regulation must be regarded as taking effect as soon as it enters into force, as it determines in the present legal consequences of actions in the past.

It can only be inferred from Article 6 (2) of Regulation No 130/63 (EEC) that the inclusion of interrupted periods in the scheme laid down by paragraph (1) of Section B of Annex G, I, was unlike the other amendments, only to take effect on 1 January 1964. If on the other hand it had been intended to set aside the general principle laid down in Case 44/65 that the new law is applicable to the future effects of an earlier situation, this intention would have had to be expressly stated in Regulation No 130/63. Neither Regulation No 130/63 itself nor the discussions which preceded its adoption show any sign of any such intention.

(ii) An examination of Articles 50 and 53 of Regulation No 3 leads to the same conclusion. According to Article 50 the provisions of Annex G in their original version or as amended or supplemented from an integral part of the regulation. For this reason the transitional and final provisions of Article 53 are applicable to paragraph (1) of Section B of Annex G, as amended, provided it is understood however that this amended version takes effect, according to the distinctions which it draws, partly on 1 January 1959 and partly — in particular in the case of the disputed provision — on 1 January 1964.

This means in particular:

- that in principle the inclusion of interrupted periods in the procedure set out in paragraph (1) of Head B of Annex G, I, does not create the right to payment of a higher pension for the period before the entry into force of this inclusion, that is to say, before 1 January 1964 (Article 53 (1));
- that, subject to this reservation, the procedure set out in paragraph (1) of Head B of Annex G, I, to Regulation No 3 must also be applicable to future arrears of pension in respect of which

the risk materialized before 1 January 1964.

The *Federal Republic of Germany* draws attention to the fact that, since what is concerned is an interrupted period under German law, the periods to be taken into consideration should in principle be the contribution periods for the purpose of German pensions insurance.

However, the effect of the amendment of Regulation No 3 by Regulation No 130/63 has been that contributions paid in another Member State have been assimilated, for the calculation of the interrupted period, to those paid in Germany.

The amendment, which only entered into force on 1 January 1964, applies nevertheless to risks which materialized before this date and for which a pension has already been fixed.

This is borne out by the following facts:

- On the one hand Article 50 of Regulation No 3 states that both the original and the amended versions of the provisions of Annex G form an integral part of Regulation No 3;
- On the other hand implementing provisions, for example those in Annex G, according to the case-law of the Court (OJ of 13.7.1966, Case 4/66, *Labots (née Hagenbeek v Raad van Arbeid* [1966] E.C.R. 431) cannot derogate from the principal provisions of Regulation No 3, such as Article 53 (4). This provision applies therefore without any restriction to Annex G.
- However, according to Article 53 (4): 'The rights of persons for whom a pension was calculated before *this regulation* entered into force may be reviewed at their request'. In Article 53 the words 'this regulation' refer to Annex G as amended and the words 'entered into force' refer to the actual date when the amendment entered into force, namely 1 January 1964. Head B of Annex G as amended must therefore be applied to insurance cases in respect of which an earlier pension has already been fixed if this pension has to be reviewed.

With regard to Article 6 (2) of Regulation No 130/63 this paragraph affords no ground for saying that risks which have materialized before the dates of the entry into force of the provisions of Regulation No 130/63, are not formed by the amendments. Therefore the effect of Article 53 (1) and (3) is that the right to benefit only arises with effect from the date mentioned and not that events occurring before the entry into force of the regulation cannot be taken into account.

2 — The second question

According to the *Commission* the answer to the question whether the pensions must be reviewed automatically or only at the request of the person concerned is to be found in Article 53 (4) read in conjunction with Article 50 of Regulation No 3. Article 53 (4) states that pensions are only reviewed at the request of the person concerned. Since under Article 50 of Regulation No 3 the above-mentioned provisions are also applicable to the procedure set out in Annex G/I, any review based on the amended version of this Annex could only be carried out at the request of the person concerned. However, according to the Commission an automatic review can be carried out if it complies with national law to the extent to which it leads to an improvement in the situation of the person concerned. The prohibition of an automatic review of pensions only refers to those cases where the review would be less favourable to him. This view emerges, *inter alia* from the *ratio* of Regulation No 3 and in particular of Article 53 (5) under which the more favourable provisions of the legislation of a Member State may be applied.

The *Federal Republic of Germany* calls attention to the fact that it is quite clear from the wording of Article 53 (4) that pensions fixed before 1 January 1964 must be reviewed *at the request of the person concerned* and not automatically.

With regard to the second part of this question, namely from what point in time in the case both of an automatic review and of a review at the request of the person concerned the amended amount of the

pension takes effect, the *Commission* takes the view that contribution periods completed in other Member States are only to be taken into account in the case of pensions or arrears of pensions payable with effect from 1 January 1964.

Such an answer is in accordance with the provisions of Article 6 (2) of Regulation No 130/63 which provides that the amendments to Annex G, I, which are the subject matter of this case, do not enter into force until 1 January 1964. This argument can also be supported by Article 53 (1) of Regulation No 3, since, for the purpose of its application, the operative date is 1 January 1964 and not 1 January 1959. In fact when confronted with later substantive amendments to this regulation — which is the position in this case — it is necessary to take the date of their entry into force in considering whether to apply the prohibition on payment of benefits in Article 53 (1). This reasoning presupposes that before the entry into force of Regulation No 130/63 there were no procedures corresponding to the present text of paragraph (1) of Head B Annex G, I, so that no revision prior to 1 January 1964 could therefore be contemplated.

On this point the Commission points out that Articles 27 and 28 of Regulation No 3 do not apply in this case and that the question whether there is an 'assimilated period' must be settled solely under the internal law of the Member State concerned (cf OJ of 5 December 1967, Case 14/67, *Welchner* [1967] E.C.R. 337).

In the absence of special provisions contribution periods completed in other Member States could not be taken into account and Regulation No 130/63 had to be adopted to enable them to be reckoned. It is for this reason that these contribution periods can only be taken into account from 1 January 1964 and not from 1 January 1959.

The *Federal Republic of Germany* points out that the pension must be recalculated with effect from 1 January 1964, the date from which the person concerned is entitled to the new benefits, but goes on to say that by virtue of Article 53 (4) of Regulation No 3 the request for a review had to be introduced within two years after Regulation No 130/63 was brought into force.

Grounds of judgment

- 1 By order of 30 October 1969 the Bundessozialgericht has referred to the Court for a preliminary ruling under Article 177 of the Treaty establishing the EEC two questions relating to the interpretation of certain provisions of Regulation No 3 of the Council of 25 September 1958 concerning social security for migrant workers, as amended by Regulation No 130/63 of the Council of 18 December 1963.

The first question

- 2 The Court is asked first to rule whether the procedure set forth in paragraph (1) of Head B of Part I of Annex G to Regulation No 3, as amended by Article 6 of Regulation No 130/63, applies to pensions paid in respect of risks which materialized before 1 January 1964, the date when the amended text entered into force.
- 3 The object of this amendment is to assimilate to the contributions paid under German law and to affiliation to the German pensions insurance scheme affiliation and contribution to a pensions insurance scheme of another Member State for the purpose of determining whether the insured person fulfils the minimum requirements relating to contributions and affiliation required by German law for taking into account 'interrupted periods' in calculating his pension.
- 4 According to paragraph (2) of the said Article 6 this amendment took effect on 1 January 1964.
- 5 The order for reference calls attention to the fact that according to the Bundesknappschaft the law applicable to social security benefits is generally that in force when the risk materializes and that although Article 53 of Regulation No 3 made an exception to this principle in the case of the new procedures introduced on 1 January 1959 it does not make any such exception in the case of later amendments to this regulation. Therefore, it says, pensions in respect of which the risk materialized before 1 January 1964 cannot fall within the provisions brought into force on this date and continue, even as regard the future, to be subject to the former provisions.
- 6 Under Article 53 (3) of Regulation No 3, 'benefit shall be payable under this regulation even if it relates to an event before the date on which it comes into force'. On the other hand under paragraph (4) of that article the rights of persons

for whom a pension was calculated before Regulation No 3 entered into force may be reviewed at their request.

- 7 Although these provisions originally governed the situation existing on 1 January 1959, the date when the regulation was brought into force in its original form, they are nevertheless general in scope so that they also apply to the amended version of that regulation and in particular to Annex G, as amended by Regulation No 130/63, with the reservation that the date when their rules take effect is brought forward to 1 January 1964, the date when that amendment entered into force. This provision is in fact only an application of the principle that amending legislation applies, except where otherwise provided, to the effects in the future of situations which have arisen under the law as it stood before amendment.
- 8 As Regulation No 130/63 does not distinguish between pensions in relation to which the risk materialized before 1 January 1964 and those in relation to which it materialized after that date, it does not constitute an exception to this principle.
- 9 It therefore has to be accepted that the new rules take effect as from 1 January 1964 for all pensions without distinction. The answer must therefore be that the procedure introduced by paragraph (1) Annex G/I-B to Regulation No 3, as amended by Article 6 of Regulation EEC No 130/63, applies to pensions and arrears of pension which fell due as from 1 January 1964, even if those pensions are paid in respect of risks which materialized before that date.

The second question

- 10 Should the answer to the first question be in the affirmative, the Bundessozialgericht asks in addition whether the pensions are to be reviewed automatically or only at the request of the individual concerned and with effect from what date.
- 11 Under Article 53 (4) of Regulation No 3, 'The rights of persons for whom a pension was calculated before this regulation came into force may be reviewed at their request'.
- 12 This provision applies to cases referred to in Article 6 of Regulation No 130/63 which amends Annex G/I-B and governs therefore the review of pensions arising out of this amendment. Regulation No 3 in its new and previous version therefore provides for a review of pensions only at the request of the persons concerned.

- 13 However Article 53 does not prevent insured persons from taking advantage of solutions under national legislative systems which may be more favourable to them. On the contrary, paragraph (5) of that article secures, at least in certain respects, that insured persons may have the benefit of any such more favourable solutions arising out of national legislative systems. There is therefore no objection to an automatic review under national law.
- 14 Finally it is apparent from Article 53 (4) and (5) that a review at the request of the insured person relates back to 1 January 1964, provided that the request has been submitted within two years, and to the date of the request if it is made after this period.
- 15 With regard to any automatic reviews which may be carried out it is for the national legislative system to determine the effects of this more favourable treatment without however adversely affecting the rights which the insured person derives directly from Regulation No 3.
- 16 The answer to the second question must therefore be that under Community law pensions are to be reviewed at the request of the person concerned and that the review operates retroactively with effect from 1 January 1964 or from the date of the request according to the distinction made in Article 53 (4) and (5) without prejudice to any national provisions which may be more favourable to insured persons.

Costs

- 17-18 The costs incurred by the Government of the Federal Republic of Germany and by the Commission of the EEC which have submitted their observations to the Court are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Bundessozialgericht, the decision as to costs is a matter for that Court.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the oral observations of the Commission of the European Communities;

Upon hearing the opinion of the Advocate-General;
 Having regard to the Treaty establishing the European Economic Community, especially Articles 48, 51 and 177;
 Having regard to Regulations Nos 3 and 130/63 of the Council;
 Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
 Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it for a preliminary ruling by the judgment of 30 October 1969 by the Bundessozialgericht hereby rules:

1. **The procedure introduced by paragraph (1) of Annex G/I - B to Regulation No 3, as amended by Article 6 of Regulation No 130/63, applies to pensions and arrears of pensions which have fallen due as from 1 January 1964, even if these pensions are paid in respect of risks which materialized before that date;**
2. **Under Community law pensions are to be reviewed at the request of the person concerned and the review operates retroactively with effect from 1 January 1964 or from the date of the request according to the distinction made in Article 53, without prejudice to any national provisions which may be more favourable to insured persons.**

Lecourt	Monaco	Pescatore	
Donner	Trabucchi	Strauß	Mertens de Wilmars

Delivered in open court in Luxembourg on 14 April 1970.

A. Van Houtte
 Registrar

R. Lecourt
 President

OPINION OF MR ADVOCATE-GENERAL ROEMER
 DELIVERED ON 11 MARCH 1970¹

*Mr President,
 Members of the Court,*

The problem in the national proceedings which has given rise to the question which has

to be dealt with today is concerned with the has taking into account of so-called interrupted periods when determining a pension under the German Reichsknappschaftsgesetz (the German law relationg to the Federal

¹ — Translated from the German.