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Press and Information

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Judgment of the Court of Justice in Joined Cases C-396/05, C-419/05 and C-450/05

Habelt, Möser and Wachter v. Deutsche Rentenversicherung Bund

PAYMENT OF AN OLD-AGE PENSION TO DISPLACED PERSONS OF GERMAN NATIONALITY OR ORIGIN MUST NOT BE REFUSED ON THE GROUND THAT THEY RESIDE IN ANOTHER MEMBER STATE

The Court has declared that it is incompatible with freedom of movement for persons for Germany to allow the inclusion of contribution periods completed outside the Federal Republic to be made subject to the condition that the recipient reside in Germany

Community Regulation No 1408/71 lays down rules for coordination in the area of social security in order to ensure that persons who move within the Community retain their acquired rights and advantages.

The regulation established the principle that old-age pensions acquired under the legislation of a Member State must not be affected by the fact that the recipient lives in the territory of another Member State. However, there are exceptions to that principle. As regards Germany, the regulation allows, inter alia, the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed outside the territory of the Federal Republic of Germany to be made subject to the condition that the recipient reside in Germany.

On the basis of that exception, the Rentenversicherung Bund (Federal pension insurance body) refused to take account of two types of contribution period.

Contribution periods completed between 1939 and 1945 in the territory of the Sudetenland and between 1937 and 1945 in Pomerania (Cases C-396/05 and C-419/05)

Ms Habelt and Ms Möser, two German nationals residing in Belgium and the United Kingdom respectively, asked the Sozialgericht Berlin to set aside the refusal to take account, for the purposes of the calculation of their old-age pensions, periods of contribution completed in those territories, where, at the time, the social security legislation of the former German Reich applied.

In order to enable it to rule on those applications, the Sozialgericht referred to the Court of Justice the question of the compatibility of the possibility, provided for by Regulation No 1408/71, of excluding contribution periods completed in the territory where the legislation of the Reich applied from payments of old-age pensions.

In today's judgment, the Court rejects, first of all, the argument that old-age benefits in respect of contribution periods completed between 1937 and 1945 must be considered to be benefits for victims of war or its consequences and are therefore excluded from the provisions of the regulation.

The Court finds that the situation of Ms Habelt and Ms Möser does fall within the scope of Regulation No 1408/71. The pension due to them represents the counterpart of contributions which they have paid to insurance bodies of the Reich and subsequently of the Federal Republic.

The refusal to take account, for the purposes of calculating the old-age benefits paid to recipients who do not reside in Germany, of contributions paid between 1937 and 1945 constitutes an obstacle to their right to freedom of movement within the Union.

In the absence of any objective justification for that obstacle, the Court concludes that the provision which makes it possible to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed outside the territory of the Federal Republic subject to the condition that the recipient reside in Germany is incompatible with freedom of movement for persons.

Pensions based on contribution periods completed in a third State by displaced persons (Case C-450/05)

The Rentenversicherung also refused to pay an old-age pension in respect of contribution periods completed in Romania between 1953 and 1970 by Mr Wachter, an Austrian national who resides in Austria and who enjoys in Germany the status of displaced person (expellee).¹ Before 1994, pensions based on contribution periods abroad could, under a German-Austrian convention, be paid in Austria. Following the entry into force in Austria of Regulation No 1408/71, however, the regulation allows such pensions to be paid only to recipients residing in Germany.

As it was not until 1999 that he reached the age of 63, when the right to an old-age pension arises, Mr Wachter was refused payment of the pension in Austria. The Landessozialgericht Berlin-Brandenburg, which rules on appeal on the action brought by Mr Wachter, raises the question whether the contested provisions of Regulation No 1408/71 are compatible with the right to freedom of movement guaranteed by the Treaty.

The Court observes that Community law applies to a situation like that of Mr Wachter, who relies on the benefit of an old-age pension under the legislation of a Member State (Germany) other than the one in which he resides (Austria). Although, at the time, the insurance bodies to which Mr Wachter paid his contributions belonged to a third State (Romania), those contributions were none the less recognised for the purposes of obtaining a German pension.

In those circumstances, the loss of the right to old-age benefits following the entry into force, in Austria, of the provisions of Regulation No 1408/71 infringes the right to freedom of movement for workers.

The Court concludes that the provisions which make it possible to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed in Romania subject to the condition that the recipient reside in Germany are incompatible with freedom of movement for persons.

¹ Under the Law on displaced persons and refugees (Bundesvertriebenengesetz).

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Languages available: ES CS DE EL EN FR HU IT PL PT RO SK

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-396/05>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249

or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956