

Opinion of Advocate General Mazák delivered on 16 January 2008

K. D. Chuck v Raad van Bestuur van de Sociale Verzekeringsbank

Reference for a preliminary ruling: Rechtbank te Amsterdam - Netherlands

Old-age insurance - Worker who is a national of a Member State - Social security contributions - Separate periods - Different Member States - Calculation of periods of insurance - Application for a pension - Residence in a non-Member State

Case C-331/06

European Court reports 2008 Page I-01957

1. This reference for a preliminary question concerns Article 48 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001 ('Regulation No 1408/71' or 'the Regulation'). (2)
2. This provision concerns periods of insurance of less than one year under a given national pension system. Article 48(2) of Regulation No 1408/71 provides, in essence, that such short periods are to be aggregated to periods of insurance completed under other social security systems of one or several other Member States.
3. In the case giving rise to the present reference, a British national worked for several years in the Community (mainly in the Netherlands but also for nine months in Denmark) and then moved to the United States, where he has been living ever since. When he submitted a request for a pension to the Netherlands pension authorities, the question arose whether the rule contained in Article 48(2) of Regulation No 1408/71 should be applied to a pension request submitted by a person residing outside the Community, which would mean, in this case, that the Netherlands pension authority would have to take into account the periods of insurance completed under both Netherlands and Danish law when calculating the pension requested.

I – Legal framework

A – Community legislation

4. Regulation No 1408/71 lays down provisions for the coordination of the application of national social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.
5. Article 2 of that regulation provides as follows:
'Persons covered
1. This Regulation shall apply to employed or self-employed persons and to students who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors.
...'
6. Article 3(1) of that regulation states as follows:
'Equality of treatment
1. Subject to the special provisions of this Regulation, persons [resident in the territory of one of the Member States (3)] to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of the State.'
7. Article 10 of the Regulation states:
'Waiving of residence clauses – Effect of compulsory insurance on reimbursement of contributions
1. Save as otherwise provided in this Regulation invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.
The first subparagraph shall also apply to lump-sum benefits granted in cases of remarriage of a surviving spouse who was entitled to a survivors' pension.
...'
8. Article 46(2) of the Regulation provides:
'2. Where the conditions required by the legislation of a Member State for entitlement to benefits are satisfied only after application of Article 45 and/or Article 40(3), the following rules shall apply:
(a) the competent institution shall calculate the theoretical amount of the benefit to which the person concerned could lay claim provided all periods of insurance and/or of residence, which have been completed under the legislation of the Member States to which the employed person or self-employed person was subject, have been completed in the State in question under the legislation which it administers on the date of the award of the benefit. If, under this legislation, the amount of the benefit is independent of the duration of the periods completed, the amount shall be regarded as being the theoretical amount referred to in this paragraph; ...'

9. Article 48 of the Regulation provides:

'Periods of insurance or of residence of less than one year

1. Notwithstanding Article 46(2), the institution of a Member State shall not be required to award benefits in respect of periods completed under the legislation it administers which are taken into account when the risk materialises, if:

- the duration of the said periods does not amount to one year, and
- taking only these periods into consideration, no right to benefit is acquired by virtue of the provisions of that legislation.

2. The competent institution of each of the Member States concerned shall take into account the periods referred to in paragraph 1, for the purposes of applying Article 46(2) excepting subparagraph (b).

3. If the effect of applying paragraph 1 would be to relieve all the institutions of the Member States concerned of their obligations, benefits shall be awarded exclusively under the legislation of the last of those States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with Article 45(1) to (4) had been completed under the legislation of that State.'

10. Article 36(3) of Regulation (EEC) No 574/72 (4) ('the Implementing Regulation') provides as follows:

'Where a claimant resides in the territory of a State which is not a Member State, he shall submit his claim to the competent institution of that Member State to whose legislation the employed or self-employed person was last subject.

Should the claimant submit his claim to the institution of the Member State of which he is a national, the latter shall forward such claim to the competent institution.'

B – National legislation

1. Netherlands legislation

11. The *Algemene Ouderdomswet* (General Law on old-age pensions – 'AOW') provides that those deemed under that law to have been insured receive a pension from the age of 65. Insured persons are those who are not yet 65 years of age and resident in the Netherlands or not resident in the Netherlands, but liable to tax on wages and salaries for paid employment undertaken in the Netherlands. The old-age pension is reduced by 2% for each full calendar year during which the person entitled to a pension was not insured after reaching the age of 15 years and before reaching the age of 65 years.

2. Danish legislation

12. The Danish legal system relating to old-age pensions provides insurance for those who live and work in Denmark. Like the Netherlands system, the Danish system is cumulative. Under the provisions of Danish legislation Mr Chuck cannot derive an entitlement to an old-age pension from the fact that he was insured for nine months in the past.

II – Factual background, procedure before the national court and the question referred

13. The applicant was born on 13 December 1935 and is a British national. From 1 September 1972 to 1 April 1975 and from 1 January 1976 to 31 December 1977, that is to say, for four years and seven months, he was resident and worked in the Netherlands. In the nine months between these two periods the applicant worked in Denmark, where he paid social security contributions. Since 1 January 1978 he has been resident in the United States.

14. On reaching pensionable age, the applicant submitted an application for an old-age pension to the Raad van bestuur van de Sociale Verzekeringsbank (Management Board of the Social Insurance Bank or 'SVB').

15. By decision of 11 September 2001, the SVB informed the applicant that under the AOW he was entitled as from December 2000 to a pension amounting to 10% of the full AOW pension. For the calculation of the amount of the pension the SVB did not take account of the social security contributions made in Denmark, because Mr Chuck did not reside in the Community when he introduced his demand for a pension and, according to the SVB, could therefore not claim the benefit of Article 48 of the Regulation.

16. The applicant was also informed that, since his spouse was less than 65 years of age, he was entitled to an allowance of 26% of the full allowance with effect from December 2002.

17. Mr Chuck objected to this decision but on 2 January 2002 the SVB rejected this objection as unfounded. Mr Chuck challenged that decision before the *Rechtbank Amsterdam*. He claimed in substance that the period of time during which he contributed to the Danish social security system should have been taken into account by the SVB for the calculation of his pension and that the SVB had wrongfully omitted to apply Article 48(2) of the Regulation, because the fact that he was not resident on the territory of the Community did not preclude the application of that provision.

18. On 27 July 2006 the *Rechtbank Amsterdam* decided to stay the proceedings and to make a reference to the Court of Justice of the European Communities for a preliminary ruling on the following question:

'Where a worker is resident outside the Community on the date on which he reaches pensionable age, should Article 48 of the Regulation be applied in the same way as in a case where the worker concerned is resident in the territory of the Community?'

III – Procedure before the Court

19. The Court has received observations from the SVB, the Commission, and the Greek, Italian and Netherlands Governments.

20. An oral hearing was held on 27 September 2007.

IV – Main arguments of the parties

21. The Commission proposes that the answer should be that when a worker resides outside the Community at the time when he reaches the age of retirement, Article 48 of the Regulation must be applied in the same way as if the worker resided on the territory of the Community. For the purpose of the application of that article it is not decisive whether the person retiring has his residence on the territory of the Community or outside.

22. It appears from the case-law of the Court that Regulation No 1408/71 does not create a common social security system but merely coordinates national systems. While migrant workers who were affiliated to various national systems retain separate claims against different national social security institutions, the Community rules on social security of migrant workers ensure that rights are recognised and protected as soon as they are acquired by those who are to be regarded as migrant workers within the meaning of that legislation.

23. Furthermore, the case-law of the Court shows that what matters for the application of these rules is the relationship between a worker and a given social security system of a Member State under which he has been insured for a given period, rather than, for example, the place where a professional activity is carried out. In the Commission's view the essential criterion for the application of Regulation No 1408/71 is therefore the relationship between the worker and the social security system of a Member State.

24. If the SVB's reasoning were to be followed, that would deprive the principle of aggregation provided for by Regulation No 1408/71 of much of its effectiveness.

25. None the less, it is clear that no provision of the Regulation imposes the exportability of social benefits to non-member countries. This question continues to be governed by national law.

26. The Greek and Italian Governments essentially agree with the Commission. The Greek Government also points out that Article 36(3) of Regulation No 574/72 provides that when a claimant resides in the territory of a non-member country, he is to submit his claim to the competent institution of the Member State to whose legislation the worker was last subject.

27. The Italian Government submits that Article 10(1) of Regulation No 1408/71, which aims at maintaining the benefits in case of a move from one Member State to another, does not in itself imply that the right to benefits will be retained only where the person concerned moves from one Member State to another and does not exclude the acquisition of a right to benefits when the claimant no longer resides in a Member State at the moment when he retires. It also refers to the amendments to Article 3 of Regulation No 1408/71 by Regulation No 647/2005, which removes the requirement of residence on the territory of a Member State in order to benefit from the social security legislation of any Member State in a non-discriminatory way. Furthermore, it points out that Article 2(1) of Regulation (EC) No 883/2004, (5) which repeals Regulation No 1408/71 from the date of its application, (6) provides that that 'Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States'.

28. The Netherlands Government submits, by way of argument in favour of a positive answer to the question referred, that, in order to encourage freedom of movement for workers, Article 42 EC provides for a system which guarantees workers' social security rights by virtue of, first, a system of aggregation of all insurance periods beyond the national territory of each Member State which applies to the acquisition and the retention of rights to benefits and, second, the obligation to pay benefits throughout the Community. Furthermore Article 36(3) of Regulation No 574/72 provides for a procedure which allows residents of non-member countries to request old-age and invalidity pensions.

29. However, by way of argument in favour of a negative answer, the Netherlands Government submits that Regulation No 1408/71 is designed to facilitate freedom of movement for workers and their families within the Community. This view is also supported by the wording of Article 42 EC, which states that the Council is to make arrangements to secure payment of benefits to persons resident in the territories of Member States.

30. Lastly the Netherlands Government emphasises that if the old-age benefit must be calculated in accordance with Article 48(2) of Regulation No 1408/71 this does not mean that it is exportable to a non-member country and be paid there. This question is not regulated by Regulation No 1408/71 and is exclusively subject to national legislation.

31. SVB, the defendant in the action before the referring national court, takes the view that the Court should give a negative answer to the preliminary question.

32. It submits first that the Regulation guarantees rights and advantages only to workers moving within the Community. It cannot be inferred from the Court's case-law that, as a general rule, persons falling under the personal scope of the Regulation can automatically derive rights from it.

33. Furthermore the SVB would be required to apply Article 48 of the Regulation in the case of a pension claimant who resides outside of the Community only if the benefits to be aggregated were exportable on the basis of Article 10 of the Regulation. It appears that Article 10 guarantees only the exportability of a pension to another Member State. This implies that Article 10 does not oblige the Danish authorities to make a pension exportable outside the Union, so it would be illogical if Article 48 of the Regulation obliged the Netherlands authorities to take into account the social security contributions made by Mr Chuck over nine months in Denmark and these contributions thereby had an effect outside the Community. In the present case it is solely on the basis of Netherlands national law that Mr Chuck is entitled to export to the United States pension rights derived from the AOW.

34. Thus, since Community law does not provide for the Danish benefits to be exported, it is *a fortiori* not possible to derive from Community law the right to export the aggregation of these benefits on the basis of Article 48(2) of the Regulation. This conclusion is confirmed by Article 7 of Regulation No 883/2004. (7)

V – Appraisal

35. In the action before the referring court, the essential point at issue between the parties is whether, pursuant to Article 48(2) of the Regulation, the SVB ought to have taken account of the applicant's insurance period of nine months in Denmark when calculating his pension payable by the SVB.

36. The principle of Article 48(2) of the Regulation is not, as such, disputed in the present case. Article 48 of the Regulation deals with the specific issue of periods of insurance of less than one year under the national legislation of a given Member State. Article 48(1) provides that, given the shortness of the insurance period, the institution administering that legislation is relieved from its obligation to grant benefits. Article 48(2) of the Regulation ensures that such periods are nevertheless taken into account by the national authority of the Member State competent for the calculation of the pension rights. (8)

37. The point at issue is whether that article must be applied in the case of a worker who does not reside within the Community at the time when he requests a pension.

38. Article 2 of Regulation No 1408/71 establishes two cumulative criteria which must be met in order for the Regulation to apply to the situation of an individual: nationality of a Member State of the Community (or the status of stateless person or refugee residing within the territory of one of the Member States) and affiliation to the social security system of a Member State.

39. Regulation No 1408/71 does however not lay down specific rules regarding its territorial scope or the legal situation of pension rights acquired by workers who subsequently moved to a non-member country.

40. It is true that Article 10 of Regulation No 1408/71 expressly prohibits so-called residence clauses only in so far as the Member States of the Community are concerned. This in itself, however, does not allow the conclusion that workers cease to benefit from rights provided for in the Regulation when they move to a non-member country. Indeed, the definition of the territorial application of the Treaty in Article 299 EC does not preclude Community law from having effects outside the territory of the Union. (9)

41. It is therefore necessary to look at the general scheme and the purpose of Article 48(2) of the Regulation in order to determine whether the claimant's place of residence at the time of submitting the pension request should matter for the application of the principle of aggregation of short periods of insurance as provided in Article 48(2) of the Regulation.

42. It may first be pointed to the fact that the Implementing Regulation of Regulation No 1408/71 contains a rule determining the competent social security authority for pension claims made by residents of non-member countries. This appears to indicate that Regulation No 1408/71 is meant to apply to claimants who do not reside within the Community at the time of submitting their request.

43. As regards Article 48(2) of Regulation No 1408/71, the Court has consistently held that regulations adopted for the implementation of Article 42 EC have as their objective the establishment of the greatest possible freedom of movement for migrant workers within the common market and must be interpreted in the light of that objective. (10)

44. Regulation No 1408/71 seeks to achieve this objective by preventing possible negative effects that the exercise of the freedom of movement for workers could have on the enjoyment, by workers and their families, of social security benefits. With regard to pension rights, the Regulation is designed to consolidate the career of migrant workers as regards contributions to various social security systems and thus to provide workers with legal certainty that they will retain the pension rights deriving from their contributions to pension systems in a similar way to a worker who has not exercised his right to freedom of movement within the Community. (11)

45. Article 48 of Regulation No 1408/71 deals more specifically with the aggregation of insurance periods of less than one year under the legislation of a given Member State to insurance periods completed in other Member States. If short insurance periods completed in accordance with the legislation of a given Member State were not to be taken into account in the calculation of the pension at retirement age, this loss could affect a worker's decision to exercise his right to move freely within the Community because a worker is clearly unable, when he decides to move to another Member State, to predict how long he will work there and whether he will be able to derive pension rights under the applicable national legislation. Therefore Article 48 of the Regulation ensures that such periods are aggregated to periods of insurance under the legislation of one or more other Member States, so that they can give rise to a pension payment even if, on the basis of national law alone, no autonomous entitlement to an old-age pension could be derived from such short insurance periods.

46. In Mr Chuck's case, it is clear that his move from the Netherlands to the United States does not bear any relation to freedom of movement for workers within the Community. This link comes, however, from the fact that he previously exercised his right to freedom of movement within the Community, when working, as a British national, in the Netherlands, before moving to Denmark to work there for nine months and then moving back to the Netherlands. These are precisely the kind of circumstances in which Regulation No 1408/71 seeks to ensure that a worker's social security rights are not adversely affected by the exercise of freedom of movement.

47. A Community national can indeed not predict, when taking the decision whether to go and work for a short period in another Member State, where he will reside when he retires. Thus, if it may be the case that a short working period in a given Member State, like Mr Chuck's nine-month-stay in Denmark, will not be taken into account in the calculation of the pension at retirement age, depending on whether the worker resides in the Community when requesting the pension, such uncertainty may affect a worker's decision to exercise his right to move freely within the Community at an earlier stage of his working life, when working in the Community. Such an outcome would run counter to the objective of Regulation No 1408/71, as it could create a disincentive for workers to exercise their right to freedom of movement within the Community.

48. It follows from the foregoing that in the light of the objective it pursues, Article 48 of Regulation No 1408/71 should apply to a situation such as Mr Chuck's.

49. This finding is confirmed by the analysis of the principles underlying Regulation No 1408/71. Rather than adopting measures designed to harmonise Member States' legislation, Community law provides for the coordination of national social security systems. (12) A fundamental principle of that coordination is that contributions made to various national pension systems are recognised by other Member States and the rights acquired by such contributions are retained until retirement. While Regulation No 1408/71 does not contain a provision stating expressly this principle of retention of acquired rights, both the principle of aggregation and the principle of waiving residence requirements are in fact means of ensuring its full achievement. (13)

50. This principle has been consistently applied by the Court. Its application is for instance apparent in *Belbouab*, (14) where, relying on the principle of legal certainty, the Court took the view that the fact that the claimant was, at the time of the pension request, a national of a non-member country did not prevent Regulation No 1408/71 from applying to the calculation of his pension. What mattered was the fact that, at the time of employment and insurance, the worker had fulfilled the two criteria set out by Article 2 of Regulation No 1408/71, and in particular, what was of particular relevance for that case, that he was a Community national. The Court considered it irrelevant for the calculation of the claimant's pension rights that he had lost subsequently his nationality and become a national of a non-member country. As long as the claimant had fulfilled at the same time the two conditions for the Regulation to apply, he acquired a right to have his pension rights calculated in accordance with the Regulation (15) and this right could not be affected by a subsequent change of nationality.

51. The Court applied this reasoning more recently in *Buhari Haji*, (16) but to the claimant's disadvantage. At the time when he was employed and paid social security contributions in accordance with Belgian legislation, the claimant was a national of the United Kingdom, (17) which was not yet a Member State of the Community. Thus, he did not fulfil at the same time the conditions of being a national of a Member State of the Community and of being affiliated to the social security system of a Member State. Regulation No 1408/71 did therefore not apply to his situation.

52. It follows that in order to determine whether an individual may benefit from the provisions of Regulation No 1408/71, especially of rules of calculation such as Article 48(2), it is sufficient that he fulfils the conditions listed in Article 2 of the Regulation. The principle of legal certainty requires that these conditions be examined by direct reference to the periods during which the worker in question carried out his work. (18) A consistent application of that principle also implies that a subsequent event such as residence at the time of submitting the request for a pension cannot affect the claimant's right to have his pension calculated in accordance with the rules of calculation contained in Regulation No 1408/71, and especially with Article 48(2) of the Regulation. (19)

53. In the present case, Mr Chuck has always been a British national and has been affiliated as a worker to the Netherlands and Danish social security systems. He thus fulfils the conditions for the application of the rules of Regulation No 1408/71 so far as his contributions to the social security systems of the Member States of the Community are concerned.

54. It follows that it would in my view be incompatible with the system and the objective of the Regulation to make the calculation of a pension in accordance with Article 48(2) of the Regulation subject to the condition that the applicant resides within the Community at the time where he makes his request.

55. This conclusion must however be distinguished from the question whether it is possible to get payment of a pension, calculated according to Article 48(2) of the Regulation, in a non-member country. Given the observations submitted by SVB and the Netherlands Government and in order to provide the referring court with a useful answer to the question referred, it appears necessary to make the following remarks on the latter issue.

56. While Article 10 of Regulation No 1408/71 provides for an enforceable right to receive a pension paid in any Member State of the Community, the Regulation, and Community law in general, do not contain a provision requiring Member States to pay pensions to non-member countries. This implies that, on the basis of the provisions of the Regulation, Mr Chuck does not have an enforceable right to have the pension paid into a bank account in the United States. (20)

57. The payment of a pension to a non-member country therefore remains subject to the provisions of the national law of the Member State in which the pension authority required to pay the pension is located. This means, in practice, that the possibility of having the pension paid to a non-member country and the practical options for such payment will vary depending on the provisions of the national law of the Member State which is competent to pay the pension. This national law may be affected by bilateral conventions on social security which Member States have adopted individually with numerous non-member countries. Such conventions usually provide, among other things, for the possibility of having the pension rights paid out directly in the non-member country in question.

58. It appears from the file that there is a bilateral convention between the Netherlands and the United States which deals with pension rights. The principle of the mutual recognition of insurance periods and that of non-discriminatory treatment of insurance periods completed under the legislation of other Member States, (21) which are both inherent in Regulation No 1408/71, imply that the provisions of such a convention, applicable to pension rights arising from pension periods completed under the laws of the Member State which concluded a bilateral treaty with a non-member country, must be equally applied to rights arising from pension periods completed under the legislation of other Member States. (22) Thus the position, which follows from SVB's submissions, that the benefit of the application of a bilateral treaty would be limited exclusively to pension rights acquired on the basis of Netherlands law cannot be followed.

59. Therefore, if there is a provision of a bilateral convention allowing for pension rights acquired in accordance with Netherlands law to be paid in the United States, Mr Chuck has a right to receive payment, in the United States, according to the terms of the relevant bilateral convention, of a pension calculated in accordance with the provisions of Regulation No 1408/71, including Article 48(2).

60. It follows from the foregoing that the application of Article 48 of Regulation No 1408/71 to the calculation of Mr Chuck's pension is in my view not subject to the requirement that the claimant resides within the Community at the time of submitting the request for payment of a pension.

VI – Conclusion

61. In the light of the foregoing, I am of the view that the answer to the question referred to the Court should be:

Where a worker is resident outside the Community on the date on which he reaches pensionable age, Article 48 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, should be applied in the same way as in a case where the worker concerned is resident in the territory of the Community.

1 – Original language: English.

2 – OJ, English Special Edition 1971(II), p. 416. More recently amendments were made by, inter alia, Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 2005 L 117, p. 1).

3 – Deleted by Regulation No 647/2005.

4 – Regulation of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1972(I), p. 159), as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1).

5 – Regulation of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

6 – According to Article 91 of Regulation No 883/2004, that regulation is not to apply until the date of entry into force of the new implementing regulation, which has not yet been adopted (for the Commission Proposal on the matter, see COM/2006/0016 final).

7 – This provision repeats, in essence, Article 10(1) of Regulation No 1408/71.

8 – See, to this effect, Case 55/81 *Vermaut* [1982] ECR 649. In that case the Court held that the national institution competent in retirement pension matters must take account of periods of insurance of less than a year, completed by the worker under the legislation. In essence, such periods are aggregated to periods of insurance completed under other social security systems of one or more other Member States and which give rise to autonomous pension claims under these national legislations.

9 – See, for example, Case C-214/94 *Boukhalfa* [1996] ECR I-2253, paragraph 14.

10 – Since its very first decisions in this area, the Court has consistently placed early Community legislation on social security in this broader context. See, for example, Case 75/63 *Unger* [1964] ECR 177; Case 92/63 *Nonnenmacher* [1964] ECR 281; and Case 1/67 *Ciechelski* [1967] ECR 181.

11 – See Prodromos Mavridis, '*La sécurité sociale à l'épreuve de l'intégration européenne*', Bruylant 2003, p. 500.

12 – Member States retain the right to determine the types of social benefits and the conditions for granting them, while Community law imposes certain rules and principles so as to ensure that application of the different national rules does not adversely affect persons who exercise their right to freedom of movement within the Community.

13 – See Prodromos Mavridis, cited in footnote 11, p. 524.

14 – Case 10/78 [1978] ECR 1915.

15 – See *Belbouab*, cited in footnote 14, paragraph 8.

16 – Case C-105/89 [1990] ECR I-4211.

- [17](#) – The plaintiff, who was born in Nigeria, was a British national until Nigeria became independent in 1960, 13 years before the United Kingdom's accession to the EC, and then became Nigerian. He had lived and worked in the Belgian Congo since 1937, and paid contributions to a Belgian pension system until this territory became independent on 1 July 1960.
-
- [18](#) – See, to this effect, *Belbouab*, cited in footnote 14, paragraph 7.
-
- [19](#) – In this regard, it may be pointed out that since the judgment in *Belbouab* (cited in footnote 14) it has become clear that the approach followed under Regulation No 1408/71 is different from that followed by international treaties on social security, where the requirements laid down for the attribution of social benefits must be fulfilled at the time of the event giving rise to the right to receive payment of the benefits, that is to say, for pension rights, retirement age or the date of the pension request (see Ph. Gosseries, 'Europe sociale – La libre circulation des travailleurs et les règlements CEE Nos 1408/71 et 1612/68: champ d'application matériel et personnel – règle de l'égalité de traitement', *Journal des Tribunaux du travail*, 1993, n° 560, p. 273-274).
-
- [20](#) – See, to this effect, Opinion of Advocate General Mischo in *Buhari Haji* (cited in footnote 16), point 11. Advocate General Mischo took the view that even if the claimant had been a national of a Member State of the Community, he could not rely on Article 10(1) of Regulation No 1408/71 to compel a national pension authority to pay him his pension into an account with a financial establishment located in Zaire or Nigeria.
-
- [21](#) – In this respect it is important to bear in mind that while the insurance periods must be mutually recognised by pension authorities, this does not mean that they are converted into national insurance periods.
-
- [22](#) – See, to this effect, Case C-55/00 *Gottardo* [2002] ECR I-413. In that case a bilateral social security treaty between a Member State and a non-member country allowed the nationals of that Member State to have periods of insurance in the non-member country taken into account for the purpose of acquiring the right to old-age benefits. The Court held that when giving effect to commitments under such international agreements, Member States have to comply with the obligations that Community law imposes on them. This implied in that case that the social security authority of that Member State had to grant the national of another Member State the advantages which its own nationals enjoyed under the bilateral social security treaty.