

SUMMARY

## **ECJ 4 July 2013, case C-233/12 (Simone Gardella - v - INPS), Free movement, Pension**

### **Facts**

Mr Gardella worked in Italy from 21 December 1992 to 30 April 2002, during which period of over nine years he paid insurance contributions to the Italian national social insurance institution, the INPS. As from 1 May 2002, he was employed by the European Patent Office (EPO) in Munich. In 2008, he asked the INPS to transfer the capital value representing the pension rights he had acquired in 1992-2002 to the EPO's social security scheme. He did this based on the Staff Regulations of EU officials. Pursuant to those regulations, EU officials are entitled to have the value of previously acquired pension rights paid into the relevant EU institution and to be credited under the rules of that institution. Such a transfer of value would have been favourable for Mr Gardella.

The INPS refused Mr Gardella's request on the ground that the rules in Italy did not allow for the requested transfer.

### **National proceedings**

Mr Gardella brought an action against the INPS's decision before the *Tribunale di La Spezia*. It found that the absence in the Italian legal order permitting the transfer to the EPO of the value of previously acquired Italian pension rights would appear to constitute a hindrance to the free movement of workers in the EU. It referred questions to the ECJ for a preliminary ruling.

### **ECJ's findings**

1. Mr Gardella's situation comes within the scope of Article 45 TFEU on the free movement of workers (§ 25-27).

2. The EPO is not an EU institution to which the Staff Regulations apply. Mr Gardella's situation thus falls to be assessed through a comparison with that of citizens who exercise their right to move freely within the EU in pursuing paid employment with employers that are not EU institutions or in self-employment (§ 28-31).

3. Regulation 1408/71 and its successor Regulation 883/2004, which implement Article 45 TFEU (free movement in general) and Article 48 TFEU (free movement in the field of social security), provide for an aggregation of insured periods under the laws of several countries. There is no obligation for a Member State to provide the option to an official of an international organisation, such as the EPO, of transferring the capital value of previously acquired pension rights to the pension scheme of that international organisation. The absence of such an option is not an impediment to free movement (§ 32-36).

4. Mr Gardella alleges that, if his request is denied, he risks losing his Italian acquired rights because his contribution periods in Italy may not amount to the minimum period required under Italian law for vesting entitlement to a pension (§ 42-43).

5. It is true that Article 48 TFEU provides for the introduction of arrangements to secure for migrant workers the aggregation of periods "taken into account under the laws of several countries" and that Regulations 1408/71 and 883/2004 subsequently provide that periods completed under the legislation "of any other Member State" are to be aggregated. However, EPO is not a Member State, thus periods to be aggregated under the EU rules do not encompass periods relating to employment with EPO (§ 44).

6. Nevertheless, if the mechanism for transferring pension capital to the pension scheme of a new employer in another Member State cannot apply, this may constitute an impediment to free movement. Rules such as that at issue risk creating a situation where a person who has exercised his right to free movement loses the opportunity of receiving old-age benefits to which they would have been entitled had they not accepted employment in another Member State with an international organisation. It is for the Italian court to ascertain whether or not the Italian rules have such an effect (§ 45-46).

### **Ruling**

Articles 45 TFEU and 48 TFEU must be interpreted as not precluding rules of a Member State which do not allow its nationals employed in an international organisation such as the EPO, established in the territory of another Member State, to transfer to the social security scheme of that organisation the capital value representing the pension rights they have acquired previously in the territory of their Member State of origin, where there is no arrangement between that Member State and the international organisation providing for the possibility of

such a transfer.

However, where a mechanism for transferring the capital value representing the pension rights acquired previously in a Member State to the pension scheme of a new employer in another Member State cannot apply, Article 45 TFEU must be interpreted as precluding rules of a Member State which do not allow account to be taken of employment periods which a European Union national completed with an international organisation such as the EPO, established in the territory of another Member State, for the purposes of conferring entitlement to an old-age pension.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2013-07-04

**Case number:** C-233/12