

SUMMARY

**ECJ 5 November 2014, case C-103/13 (Snezhana Somova &ndash; v &ndash; Glaven director na Stolichno upravlenie &ldquo;Sotsialno osiguryavene&rdquo;)**

**Facts**

Ms Somova worked in Bulgaria from 18 January 1957 until 31 May 1996, a period of over 39 years. She worked as a self-employed farmer in Austria from October 1995 until July 2011. She was awarded Bulgarian old-age pension from 5 July 2007. The award was based on her declaration that she had not worked and had not been insured since 4 June 1996, which was untrue in that she had worked on a self-employed basis in another Member State after that date. This untruthfulness was relevant because Bulgarian law provides that social insurance must have come to an end before an old-age pension will be granted. In 2007, the relevant Bulgarian authority 'SUSO' awarded Ms Somova pension benefits, but when they found out that she had been insured as a self-employed person in Austria after 4 June 1996, they annulled the decision and demanded repayment of the sums paid to her.

**National proceedings**

Ms Somova appealed against the SUSO's decision. The court referred four questions to the ECJ.

The first question was whether the Bulgarian provisions of law, whereby insurance is required to have come to an end before an old age pension can be granted to a national of a Member State who, at the time of applying for a pension, is working as a self-employed person in another Member State and who falls within the scope of application of Regulation 1408/71, are

compatible with Articles 48 and 49 of TFEU on, respectively, free movement of workers and the right of establishment. The second question was whether Regulation 1408/71 permits it to be determined that periods of insurance in another Member State should not be taken into account.

### **ECJ's findings**

1. On the one hand, Regulation 1408/71 allows different national security schemes to exist; hence, Member States retain the power to organise their social security schemes. On the other hand, the TFEU precludes measures which might place EU nationals at a disadvantage when they wish to pursue an economic activity in another Member State. It follows that the Bulgarian legislature has the power to determine the conditions for the grant of an old-age pension under its national law insofar as they are not discriminatory on grounds of the nationality of the applicant and do not prevent or dissuade persons who are entitled to an old-age pension from exercising the fundamental freedoms guaranteed by the TFEU (§ 33-40).

2. The relevant provision of Bulgarian law requires a formal discontinuance of the payment of contributions in order for an old-age pension to be awarded. A discontinuance of one day is sufficient to fulfil this condition. Moreover, the insured person is free to exercise an occupational activity after the award of a pension and can aggregate that pension with gainful activity. However, the administrative steps liable to flow from a discontinuance in one Member State could require a worker in a situation similar to that of Ms Somova to cease his or her occupational activity without having a guarantee of finding other employment. It follows that a provision such as that at issue is liable to prevent or dissuade people who are entitled to a Bulgarian pension from carrying out occupational activity in another Member State and therefore constitutes an obstacle to freedom of movement and, in particular, freedom of establishment (§ 41-45).

3. The purpose of the formal requirement to discontinue insurance is unknown, even non-existent. Accordingly, the requirement is not justified by an objective of public interest whose achievement it is capable of ensuring (§ 46-50).

4. Regulation 1408/71 does not confer any right to choose. The insured person cannot waive its application by not declaring periods of insurance completed in another Member State (§ 51-63).

### **Ruling**

1. Article 49 TFEU precludes legislation of a Member State [...], which makes the award of an old-age pension subject to the prior condition of discontinuing the payment of social

security contributions relating to activities carried out in another Member State.

2. Articles 45, 46(2) and 94(2) of Regulation (EEC) No 1408/71 [...], must be interpreted as not permitting insured persons to choose that, for the purposes of determining rights acquired in a Member State, periods of insurance completed in another Member State prior to the date of application of that regulation in the first Member State are not taken into account.

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

**Verdict at:** 2014-11-05

**Case number:** C-103/13