



16.03.2012

## NOTICE TO MEMBERS

**Subject: Petition 0356/2010 by Vasile Stoica (apparently German), on the German pension authorities' failure to apply the provisions of Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community**

### 1. Summary of petition

The petitioner claims that the responsible German pension authorities do not apply the provisions of Council Regulation (EEC) No 1408/71 since his professional activity in Romania is not being taken into account in the correct manner. The petitioner, who has already appealed unsuccessfully to the German authorities, including the German Chancellor, feels that this constitutes a serious disregard for his rights under EU legislation and he therefore calls on the European Parliament to take the matter up.

### 2. Admissibility

Declared admissible on 2 July 2010. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 8 October 2010.

The information submitted by the petitioner in his original petition and in the supplement he submitted after a corresponding invitation by the Chairman of the Committee on Petitions does not allow the Commission to get a sufficient picture of the facts which gave rise to the petition. Indeed, the petitioner only complains that his pension would have been calculated in the wrong way by the German authorities and that German and Romanian periods of insurance would have to be aggregated. He further cites certain provisions of a bilateral German-Romanian convention on social security and of the EU legislation in the field of social security coordination (Regulations (EEC) Nos 1408/71 and 574/72 and since 1 May

2010 Regulations (EC) Nos 883/2004 and 987/2009) of which not all seem to concern the petitioner's case. Yet, the petitioner fails to give any detail on the precise content of the allegedly wrong pension decision by the German authorities and on the periods of insurance which he considers that the German authorities would have to have taken into account. In the absence of any detail in this respect, the Commission is unable to give any comments on the substance of the petitioner's case.

However, the Commission would like to point out that, according to Article 6 of Regulation (EC) No 883/2004 (until 1 May 2010 according to Article 45(1) of Regulation (EEC) No 1408/71), the German authorities are obliged to take into account periods of old-age pension insurance completed in another Member State (in the case of Romania even if they were completed before the accession on 1 January 2007) insofar as this is necessary under German legislation for "*the acquisition, retention or recovery of the right to benefits*". Most importantly, periods of insurance completed in another Member State thus count towards the completion of the minimum period of insurance needed according to German legislation for the acquisition of the right to an old-age pension in Germany. This aggregation of periods of insurance, however, only pertains to the "*acquisition ... of the right to benefits*". It is of no direct relevance for the calculation of the amount of an old-age pension in Germany. Indeed, contributions to the old-age pension insurance made in one Member State (Romania) are not "transferred" in any way to another Member State (Germany) and therefore do not supplement an old-age pension there. Rather, a person having completed periods of old-age insurance (of at least one year) in two or more Member States will, provided that the remaining conditions according to national legislation taking into account the relevant EU provisions are fulfilled, receive a separate pension in all of these Member States which will be calculated primarily on the basis of the contributions made during the periods of insurance there (see Article 52 of Regulation (EC) No 883/2004 and until 1 May 2010 Article 46 of Regulation (EEC) No 1408/71).

As the aggregation of periods of insurance thus does not have a direct effect on the precise amount of an old-age pension awarded by a national authority, it would – given that the petitioner seems to complain precisely about a wrong calculation on the grounds of the non-aggregation of periods of insurance – appear rather unlikely that the German authorities have wrongly applied EU law as the petitioner contends.

Finally, insofar as the petitioner complains about the violation of a bilateral German-Romanian social security convention, the Commission cannot comment as it is outside of the scope of its competences to supervise the application of bilateral conventions of public international law concluded between the Member States.

Given that the petitioner does not give enough detail on the precise facts of his case giving rise to his petition, the Commission cannot comment further on the substance of the petitioner's case.

#### **4. Further Commission reply (REV), received on 6 September 2011.**

The petitioner has further submitted both the pension decision contested by him and the decision by which his administrative appeal against the pension decision was rejected.

In respect of the petitioner's renewed contention that the provisions of a bilateral German-Romanian social security convention have not been respected, the Commission refers to its earlier communication where it stated that it is outside of the scope of its competences to supervise the application of bilateral conventions of public international law concluded between the Member States.

The petitioner further maintains that the periods of insurance completed by him in Germany and in Romania are not correctly aggregated by the competent German institution. In this respect, the Commission would like to refer to its earlier communication in which it was described in great detail that aggregation of periods in accordance with the EU social security coordination rules means only that periods completed in another Member State have to be counted towards the completion of the minimum period of insurance needed under the law of a Member State for the acquisition of a right to an old-age pension in that Member State. They are of no direct relevance for the calculation of the amount of the old-age pension in that Member State. As is clearly stated in the decision with which the petitioner's administrative appeal against the pension decision was rejected, the petitioner fulfils the minimum period of insurance needed under German law for the acquisition of a right to a German old-age pension on the basis of the periods completed by him in Germany alone. In the petitioner's case, it was consequently not necessary to aggregate his German and Romanian insurance periods. In any case, the Commission would like to repeat that, contrary to what the petitioner maintains, aggregation of periods does not mean that periods completed in another Member State would have to be considered for the calculation of a pension. In this respect, the national decisions are therefore in line with the law of the European Union.

As regards the petitioner's further contentions that certain periods completed by him in Germany (period of attending a school of vocational training, period during which he was an asylum-seeker) should have been taken into account by the competent pension insurance institution in Germany, the Commission would like to point out that the law of the European Union in the field of social security provides only for the coordination and not the harmonisation of social security systems. The law of the European Union does not limit the power of the Member States to organise their social security schemes and, in the absence of harmonisation at Union level, it is for the legislation of each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. It follows that the recognition of periods of insurance (purportedly) completed in a Member State by the institutions of that Member State is governed by the legislation of that Member State alone. The Commission therefore cannot comment on such issues as it is outside its competences established by the law of the European Union.

The petitioner finally again refers to a certain practical arrangement adopted by the *Deutsche Rentenversicherung Bund* in respect of pensioners who are also entitled to a Romanian old-age pension. Judging from the documents and descriptions of this practical arrangement submitted by the petitioner, the Commission is led to conclude that both the situation before this practical arrangement was put in place as well as the one thereafter are in line with the law of the European Union on the coordination of social security systems. However, in order to get a better understanding of this practical arrangement and the precise reasons which led the *Deutsche Rentenversicherung Bund* to adopt it, the Commission will transmit the

documents submitted by the petitioner to the German authorities and ask them for further information about this practical arrangement and on how it is relevant to the petitioner's case. The Commission will submit a further communication to the Committee on Petition once it has obtained this information.

Finally, the Commission would like to draw the attention of the Committee on Petitions to the fact that it is evident from the documents submitted by the petitioner that he has attacked the pension decision before the competent German social court. These court proceedings seem still to be pending.

### Conclusion

The additional documents submitted by the petitioner do not point to a situation which would be contrary to the law of the European Union. Nevertheless, the Commission will contact the German authorities in order to obtain certain clarifications on the practical arrangements adopted by the *Deutsche Rentenversicherung Bund* in respect of pensioners who are also entitled to a Romanian old-age pension. The Commission will submit a further communication to the Committee on Petitions once it has obtained these clarifications.

### **5. Further Commission reply (REV II), received on 16 mars 2012**

The Commission has received the requested information from the German authorities about the practical arrangement mentioned by the petitioner and on how it is relevant to the petitioner's case.

The German authorities explain that the practical arrangement was concluded between the German statutory pension insurance institutions (grouped in the *Deutsche Rentenversicherung*) and a number of pension agents. It concerned those cases in which persons entitled to a German pension under the terms of the German *Fremdrentengesetz* in respect of periods completed in Romania asked for postponement of the award of a Romanian old-age pension in respect of these periods or renounced such Romanian pensions. The practical arrangement provided that the German pension insurance institutions would not apply § 31 of the *Fremdrentengesetz*, under which the German pension in respect of the Romanian periods was reduced by the Romanian pension in respect of that same period, provided that the person concerned had actually applied for a Romanian pension in respect of that period but had not yet been actually awarded the Romanian pension. In this sense, the German pension insurance institutions assumed the "risks" associated with possible delays in the obtaining of a Romanian pension in respect of those periods completed in Romania which also give rise to a right to a German pension under the terms of the *Fremdrentengesetz*.

The German authorities clarify that, following a judgment by the German Federal Social Court (*Bundessozialgericht*), this practical arrangement is no longer applied. Any reduction under § 31 of the *Fremdrentengesetz* would now occur only if a Romanian pension was actually received (the further requirement that the person concerned must have actually applied for a Romanian pension was thus dropped).

As regards the petitioner, the German authorities explain that he was in any case not entitled to have his periods completed in Romania recognised as periods counting towards an

entitlement to a German pension under the terms of the *Fremdrentengesetz*. Indeed, the *Fremdrentengesetz* provides for recognition of certain periods completed outside of Germany for displaced persons (*Vertriebene*) and late repatriates (*Spätaussiedler*) in the aftermath of the Second World War. As the petitioner does not belong to either of these categories, the periods completed by him in Romania do not count towards an entitlement towards a German old-age pension, but only towards an entitlement in Romania. Therefore, § 31 of the *Fremdrentengesetz* was never applicable to him and the practical arrangement without interest for his case.

Insofar as the *Deutsche Rentenversicherung Nordbayern* had at one point announced to the petitioner that it would envisage applying § 31 of the *Fremdrentengesetz*, the German authorities indicate that this erroneous information had indeed been rectified in the course of the court proceedings by the petitioner and that no deduction in accordance with § 31 of the *Fremdrentengesetz* was carried out at any point.

### Conclusion

The Commission therefore concludes that the German authorities – more particularly the *Deutsche Rentenversicherung Nordbayern* – acted in line with the provisions of the law of the European Union when awarding a German old-age pension to the petitioner.