



28.9.2012

## NOTICE TO MEMBERS

**Subject: Petition 0262/2012 by István and Martina Kovács (Hungarian), on pensions from Germany and Hungary**

### **1. Summary of petition**

The petitioners state that German and Hungarian pension authorities are failing to comply with the European legislation (Regulations (EEC) 1408/71 and 574/72) in the calculation of their pensions. They have already approached many authorities (including SOLVIT and the Hungarian Ombudsman) but have not received sufficient help from any of them.

### **2. Admissibility**

Declared admissible on 26 June 2012. Information requested from Commission under Rule 202(6).

### **3. Commission reply, received on 28 September 2012**

‘The Commission already had the opportunity to examine the petitioners’ contentions in detail and concluded that their earlier complaint did not point to a misapplication of the law of the European Union. The Commission informed the petitioners of the results of its analysis of their complaint in two very detailed letters dated 4 March 2011 and 13 May 2011.

At the outset, the Commission would once again point out to the Committee on Petitions that, according to a constant line of case-law of the Court of Justice, the law of the European Union, in particular Article 48 TFEU and the social security coordination rules adopted on its basis<sup>1</sup>, “provides for the coordination, and not the harmonisation, of the legislation of the

<sup>1</sup> 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, OJ

member States”.<sup>1</sup> Therefore, “substantive and procedural differences between the social security schemes of individual Member States, and hence in the rights of persons who are insured persons there, are unaffected by that provision, as each Member State retains the power to determine in its legislation, in compliance with EU law, the conditions pursuant to which benefits may be granted under a social security scheme”.<sup>2</sup>

The first petitioner essentially complains that he was not granted an early old-age pension by the competent German pension institution. As results clearly from the documents submitted by him, this application was refused because he does not meet the (non-discriminatory) conditions established under national German law which allow early retirement. Since the law of the European Union only provides for the coordination of national social security systems, it does not lay down any conditions under which a person is entitled to early retirement, let alone provide a legal basis for an actual claim to an early old-age pension (or any other kind of social security benefit). This is a matter of national law only. Certain publications issued by national social security institutions (that, in addition, seem to rather concern the situation under Hungarian law) which the first petitioner seems to understand in a different way, cannot call this fact into question. For the sake of completeness, the Commission notes that the first petitioner appears to actually receive a Hungarian early old-age pension.

The first petitioner further contends that the competent Hungarian pension institution wrongfully refused to hand out an empty E 202 form to him. Contrary to what he believes, this form is not an application form to be used by a citizen in order to claim an old-age pension. Claims for old-age pensions have to be introduced in the Member State of residence using the forms provided by the competent institution in that Member State. This is exactly what the competent Hungarian pension institution required the first petitioner to do. The claims are then forwarded by that institution to institutions in other Member States which are concerned by the application using the E 202 form. The E 202 form is therefore a means for communication between social security institutions and not an application form to be handed out to citizens. For the sake of completeness, the Commission notes that the first petitioner’s claim was eventually processed and forwarded to the German pension institution by way of the E 202 form once he had submitted his claim using the national form.

The second petitioner essentially complains that the competent Hungarian institution awarded her a pension for partial invalidity whereas she believed that she should be considered as fully invalid. The Commission would point out that the concordance between the German and the

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L 149, 5.7.1971, p. 2, as last amended by Regulation (EC) No 592/2008 (OJ L 177, 4.7.2008, p. 1) and Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community, OJ L 74, 27.3.1972, p. 1, as last amended by Regulation (EC) No 120/2009 (OJ L 39, 10.2.2009, p. 29) which were replaced as of 1 May 2010 by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 200, 7.6.2001, p. 1 (Corrigendum), as last amended by Regulation (EU) No 465/2012 (OJ L 149, 8.6.2012, p. 4) and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284, 30.10.2009, p. 1, as last amended by Regulation (EU) No 465/2012 (OJ L 149, 8.6.2012, p. 4).

<sup>1</sup> See only Joined Cases C-611/10 and C-612/10 *Hudziński and Wawrzyniak*, not yet reported, paragraph 41 and the case-law cited there.

<sup>2</sup> *Hudziński and Wawrzyniak*, paragraph 41.

Hungarian legislation on conditions relating to the degree of invalidity is not acknowledged in accordance with Article 40(4) of Regulation (EEC) No 1408/71 read with Annex V to this regulation (since 1 May 2010: Article 46(3) of Regulation (EC) No 883/2004 read with Annex VII to this regulation). Therefore, in accordance with Articles 40 and 51(1) of Regulation (EEC) No 574/72 (since 1 May 2010: Article 49(2) of Regulation (EC) No 987/2009), the competent German and Hungarian invalidity pension institutions remain competent for the determination of the degree of invalidity according to the assessment criteria and procedural rules established by the respective national law. They are not bound by the determination made by the other institution and retain the right to have the person concerned examined by a doctor of their choice. According to the case-law of the Court of Justice, the institution competent for an invalidity pension can require the person concerned to travel for that purpose to the Member State in which that institution is located if the beneficiary's state of health allows.<sup>1</sup> In any case, the law of the European Union does not contain any substantive standard for assessment of a degree of invalidity. Therefore, the determination of the degree of invalidity carried out by the Hungarian (and German) invalidity pension institutions does not fall to be appraised under the law of the European Union.

The petitioners claim that certain E forms issued by different social security institutions contain certain errors which would amount to forgery. The Commission once again points out that the E forms, also insofar as some of them are handed out to citizens, are means of communication between social security institutions which are issued by social security institutions. They therefore contain information issued by a social security institution. In any case, it appears from the documents submitted by the petitioners that any error which might have been contained in the E forms at issue did not have a negative influence on their rights. Most importantly, the petitioners were correctly identified by all social security institutions concerned despite certain inaccuracies. For the sake of clarity, the Commission notes that the second petitioner seems to actually have received – and still receives – medical treatment for her health condition.

The petitioners also refer to refusals of certain social security benefits during the time before the accession of Hungary to the European Union on 1 May 2004 (or, as the case may be, before the conclusion of a bilateral German-Hungarian social security agreement). As the law of the European Union only started applying in the relations with Hungary as of 1 May 2004, the Commission will not comment on these issues.

### Conclusion

The information submitted by the petitioners to the Committee on Petitions, also when evaluated in the light of the information submitted by the petitioners directly to the Commission earlier, does not point to a misapplication of the law of the European Union.

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<sup>1</sup> Case C-344/89 *Martínez Vidal* [1991] ECR I-3245, paragraph 15.