30.1.2015

NOTICE TO MEMBERS

Subject: Petition No 2099/2013 by Ilona Vinkler (Danish) on a partial pension in Denmark

1. Summary of petition

The petitioner moved to Denmark in 1991, where she worked until 2005, when, having become disabled by rheumatic disease, she was forced to retire. At that time she was just 35. It was only when she was granted a pension that she learned that, because she had lived in Poland from age 15 to age 22, she was not entitled to the full amount, but merely to a minimum pension. The petition refers both to Regulation (EEC) No 1408/1971 and the amending act (Regulation (EC) No 592/2008) and to Regulation (EC) No 883/2004.

2. Admissibility

Declared admissible on 8 August 2014. Information requested from Commission under Rule 216(6).

3. **Commission reply**, received on 30 January 2015

The Commission's observations

The competences of the European Union in the field of social security are limited. As has been confirmed by the Court of Justice on numerous occasions[1], the Treaties provide for the

[1] See for example, Case 41/84 *Pinna v Caisse d'allocations familiales de la Savoie* [1986] ECR 16, paragraph 20; Case C-340/94 *de Jaeck v Staatssecretaris van Financiën* [1997] ECR 1-495, paragraph 18; Case C-221/95 *Institut National d'Assurances Sociales pour Travailleurs Indépendants v Hervein* [1997] ECR I-635, paragraph 16.

coordination but not the harmonisation of the legislation of the Member States. In the absence of harmonisation, EU law does not limit the freedom of the Member States to organise their own social security schemes. It is for the national legislation of each Member State to specify the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are awarded, provided that such provisions comply with the principles of equal treatment and non-discrimination. As a result, there are substantive and procedural differences between the social security systems of individual Member States and consequently in the rights of persons working in different Member States, which are unaffected by the Treaties.

In the field of pensions and invalidity benefits, it is common for the legislation of a Member State to require the completion of a certain minimum period of insurance, employment, self-employment or residence before entitlement to benefit is acquired. For this reason, it is a key principle that where a citizen has worked in more than one Member State, periods of time shall be aggregated.[1] This means that a Member State must, for the purpose of the acquisition of a right to benefit, take into account periods of insurance, employment, self-employment or residence completed in another Member State to the extent necessary (i.e. insofar as the sum total of the periods completed within its own territory are shorter than is necessary to meet the required period for entitlement).

However, the principle of aggregation of periods does not mean that periods completed in one Member State have to be taken into account in another Member State for the purposes of calculating the amount of award of benefit to the claimant (i.e. to impose a responsibility upon a Member State to pay an amount of benefit in relation to periods that the beneficiary has been subject to the social security legislation of another Member State). Instead, the assumption is that a person who has been subject to the social security legislation of more than one Member State may receive a separate benefit in each Member State concerned. This benefit is calculated on the basis of the period the individual has been subject to the social security legislation of each territory concerned, meaning that each Member State will award a pro-rata sum to the claimant in accordance with its own national legislation.

According to the information at the disposal of the Commission, under Danish law, pension entitlement is calculated on the basis of the number of years of permanent residence that a person has held in Denmark between the ages of 15 and age of retirement or invalidity (irrespective of whether or not the person has been employed or paid tax during this period). The Danish legislation on invalidity benefits provides that persons having resided for at least four-fifths of the period between the age of fifteen and the beginning of their invalidity are entitled to the full amount of an invalidity pension fixed by Danish legislation. Persons who have been resident in Denmark for a shorter period will receive a proportion of the full amount. This fraction corresponds to the actual period of residence in Denmark of the person concerned between the age of 15 and the beginning of the invalidity divided by four-fifths of the total period between the age of fifteen and the beginning of the invalidity. In the case of the petitioner, this means that she receives 32/40 of the full invalidity pension reflecting the

[1] It is to be noted that different rules apply for invalidity benefits based in so-called "type A legislation" that is legislation under which the amount of invalidity benefits is independent of the periods of insurance or residence and which are expressly mentioned in Annex VI to Regulation (EC) No 883/2004, see Article 44(1) of the Regulation. As Annex VI to Regulation (EC) No 883/2004 does not contain any entry in respect of Denmark, this is not relevant in this case.

fact that she was resident in Poland for seven years of the period between the ages of 15 and 35 (the age when her entitlement to an invalidity pension commenced). This is in accordance with the basic principles of EU social security coordination in the field of invalidity benefits outlined above, including the principle of accrual of periods as the basis of entitlement.

Without further information, it is difficult to comment on the reasons why the claimant has been refused a pro rata invalidity pension from Poland. According to the information at the disposal of the Commission, under Polish legislation, an invalidity pension (*renta z tytułu niezdolności do pracy*) is payable to a person who is deemed partially or totally unable to hold any gainful employment because of the state of their health. Further such an individual must be able to demonstrate that they have completed the required insurance period for coverage taking into account contributory and non-contributory periods (five years in the case of someone whose invalidity arose after the age of 30) and the inability to work arose during periods specifically set out in the law, e.g. during the period of insurance, employment, receipt of unemployment benefits, receipt of social insurance allowances (sickness or care), or not later than 18 months after the end of these periods. As stated above, under the principle of aggregation, a competent Member State must, for the purpose of the acquisition of a right to benefit, take into account periods of insurance, employment, self-employment or residence completed in another Member State to the extent necessary to meet the required period for entitlement. There is also an expectation under the principle of assimilation of facts that a competent State, whose legislation attributes legal effects to the occurrence of certain facts or events, must take into account like facts or events occurring in any Member State as though they had taken place in its own territory. Therefore in principle, the Petitioner may be able to qualify for a Polish invalidity pension, calculated on a pro-rata basis with reference to her qualifying period in Poland. However, it is possible that in practice the petitioner does not have any qualifying contribution or non-contribution based periods of insurance in Poland and therefore is not eligible. The Petitioner may benefit from requesting further specific information from the Polish authorities in relation to the reasons why she has been assessed as not being entitled to an invalidity pension.

The Petitioner might also be entitled to a supplement payable in accordance with § 27a of the Danish Law on Active Social Policy (*lov om aktiv socialpolitik*), if her pension is below the level of "starting assistance" (*starthjaelp*) or "cash assistance" (*kontanthjaelp*). Entitlement to this supplement is conditional on the applicant having been resident in Denmark for a total of seven of the last eight years and on the applicant having been in regular employment in Denmark for a period which in total is equivalent to full-time employment for two years and six months during the last eight years. It cannot be deduced from the information provided by the petitioner, however, whether she fulfils the conditions for such an additional allowance.

The Petitioner also complains about the fact that when her invalidity pension is finally converted to an old age pension, this will still be based on the same pro rata proportion as has been used by the Danish authorities for calculating her invalidity pension. In her view, such a method of calculation is unfair because at the date she reaches statutory pension age she will have lived for 45 years in Denmark, in excess of the 40 years required for a full pension. She questions why her further years of residence in Denmark while in receipt of an invalidity pension are not taken into account for calculating her old age pension. As stated above, in the absence of harmonisation, EU law does not limit the freedom of the Member States to specify 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, provided that they comply with the

principle of equal treatment and non-discrimination. Therefore, the Denmark legislation on conversion of an invalidity pension to an old age pension is compatible with EU Law.

The Petitioner does not elaborate upon her reasons for considering the arrangements in Denmark to be in breach of Directive 79/07/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security and so it is not possible to respond to her concerns in this regard.

Conclusion

Given the principles of coordination in the field of old age pensions and invalidity pensions laid down in European law, the petitioner's complaint that she should receive a full invalidity pension cannot be upheld. Also, based on the information provided, the Commission cannot identify any violation of Directive 79/07/EEC in respect of the progressive implementation of the principle of equal treatment for men and women in matters of social security.