



## Reports of Cases

**Case C-189/16**

**Bogusława Zaniewicz-Dybeck**  
v  
**Pensionsmyndigheten**

(Request for a preliminary ruling from the Högsta förvaltningsdomstolen)

(Reference for a preliminary ruling — Social security for migrant workers — Regulation (EEC) No 1408/71 — Article 46(2) — Article 47(1)(d) — Article 50 — Guaranteed pension — Minimum benefit — Calculation of pension entitlement)

Summary — Judgment of the Court (Fifth Chamber), 7 December 2017

1. *Social security — Migrant workers — Old-age and survivor's insurance — Calculation of retirement pension — Minimum benefit — Calculation to be carried out in accordance with the combined provision of Article 50 of Regulation No 1408/71 and national legislation without applying national provisions governing pro rata calculation — Articles 46(2) and 47(1)(d) of that regulation not to be applied*

*(Council Regulation No 1408/71, Arts 46(2), 47(1)(d) and 50)*

2. *Social security — Migrant workers — Old-age and survivor's insurance — Pension supplement — Minimum income guarantee — Minimum benefit — Legislation of a Member State under which the competent institution is obliged to take into account, when calculating that benefit, all the retirement pensions received by the person concerned from one or more other Member States — Lawfulness*

*(Council Regulation No 1408/71, Art. 50)*

1. Regulation (EEC) No 1408/71 of the Council 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, is to be interpreted as meaning that, when the competent institution of a Member State calculates a minimum benefit, such as the guaranteed pension at issue in the main proceedings, it is inappropriate to apply Article 46(2) or Article 47(1)(d) of the regulation. Such a benefit must be calculated in accordance with Article 50 of Regulation No 1408/71, in conjunction with the provisions of national law, without, however, applying national provisions, such as those in the main proceedings, providing for a pro rata calculation.

As the Advocate General observed in point 47 of his Opinion, since Regulation No 1408/71 does not require Member States to provide minimum benefits and not all national legislation therefore necessarily makes provision for that kind of benefit, Article 46(2) of that regulation cannot impose specific detailed rules for the calculation of such a benefit.

Consequently, the right to a minimum benefit, such as the guaranteed pension at issue in the main proceedings, must be evaluated not on the basis of Article 46(2) or Article 47(1)(d) of Regulation No 1408/71, but by reference to the specific rules laid down in Article 50 of that regulation and the relevant national legislation.

(see paras 47, 48, 52, operative part 1)

2. Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 1606/98, and in particular Article 50 of that regulation, is to be interpreted as not precluding the legislation of a Member State under which, when calculating a minimum benefit such as the guaranteed pension at issue in the main proceedings, the competent institution must take account of all the retirement pensions which the person concerned actually receives from one or more other Member States.

It should be noted in that regard that it is established case-law that Article 50 of Regulation No 1408/71 covers cases where the periods of employment of the worker under the legislation of the States to which he was subject were relatively short, with the result that the total amount of benefits payable by those States does not provide a reasonable standard of living (judgments of 30 November 1977, *Torri*, 64/77, EU:C:1977:197, paragraph 5, and of 17 December 1981, *Browning*, 22/81, EU:C:1981:316, paragraph 12).

In order to remedy that situation, Article 50 of Regulation No 1408/71 provides that where the legislation of the State of residence makes provision for a minimum benefit, the benefit payable by that State will be increased by a supplement equal to the difference between the total benefits payable by the various Member States to whose legislation the worker was subject and that minimum benefit (judgment of 30 November 1977, *Torri*, 64/77, EU:C:1977:197, paragraph 6).

It follows, as the Advocate General observed in point 59 of his Opinion, that, for the purpose of calculating whether a person is entitled to a minimum benefit such as the guaranteed pension at issue in the main proceedings, Article 50 of Regulation No 1408/71 specifically provides that the actual amount of retirement pensions received by the person concerned from another Member State is to be taken into account.

(see paras 57-60, operative part 2)