



Reports of Cases

Case C-127/11

**Aldegonda van den Booren
v
Rijksdienst voor Pensioenen**

(Request for a preliminary ruling from the arbeidshof te Antwerpen)

(Social security for migrant workers — Article 46a of Regulation (EEC) No 1408/71 — National rules against overlapping — Old-age pension — Increase in the amount paid by a Member State — Survivor's pension — Reduction in the amount paid by another Member State)

Summary — Judgment of the Court (Fifth Chamber), 7 March 2013

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — Questions not related to the purpose of the main proceedings*

(Art. 267 TFEU)

2. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Examination of the compatibility of national law with Union law — Not included — Providing the national court with full guidance on the interpretation of EU law — Included*

(Art. 267 TFEU)

3. *Social security — Migrant workers — Benefits — National rules against overlapping — Restriction of the ceiling fixed for the overlapping of a retirement pension and a survivor's pension in the event of payment of a survivor's pension granted under the scheme of another Member State — Legislative rules constituting a provision on reduction of benefit, within the meaning of Regulation No 1408/71*

(Council Regulation No 1408/71, Arts 46a and 46b)

4. *Social security — Migrant workers — Benefits — National rules against overlapping — Not applicable to recipients of benefits of the same kind paid in accordance with the provisions of Regulation No 1408/71 — Benefits of the same kind — Criteria for assessment — Survivor's pension and old-age pension — Benefits of a different kind*

(Council Regulation No 1408/71, Arts 12(2), 46(2) and 46b(1))

5. *Social security — Migrant workers — Benefits — National rules against overlapping — Reduction of the amount of the survivor's pension paid by a Member State because of the increase in the old-age pension paid by another Member State — Whether permissible — Conditions*

(Art. 45 TFEU; Council Regulation No 1408/71, Art. 46a)

1. See the text of the decision.

(see paras 21, 22)

2. See the text of the decision.

(see para. 26)

3. See the text of the decision.

(see para. 28)

4. See the text of the decision.

(see paras 30-33)

5. Article 46a of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 1386/2001, must be interpreted as meaning that it does not preclude the application of legislative rules of a Member State containing a provision under which a survivor's pension received in that Member State is reduced as a result of the increase in an old-age pension received under the legislation of another Member State, provided, in particular, that the conditions set out in Article 46a(3)(d) are observed.

In that regard, Article 45 TFEU must be interpreted as meaning that it likewise does not preclude the application of such national legislative rules in so far as they do not lead, in respect of the person concerned, to an unfavourable situation in comparison with that of a person whose situation has no cross-border element, and, if such a disadvantage is established, in so far as it is justified by objective considerations and is proportionate in relation to the objective legitimately pursued by national law, this being a matter for the referring court to ascertain.

(see paras 34, 37, 47, operative part)