

JUDGMENT OF THE COURT (Third Chamber)  
20 March 1991 \*

In Case C-93/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail (Labour Tribunal), Brussels, for a preliminary ruling in the proceedings pending before that court between

**Erminia Cassamali**

and

**Office National des Pensions** (National Pension Office)

on the interpretation of Article 51 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal English Special Edition 1971 (II), p. 416),

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, F. Grévisse and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs,  
Registrar: J. A. Pompe, Deputy Registrar,

after considering the written observations submitted on behalf of:

Mrs Cassamali, by Franco Agostini, of the Rome Bar,

the Office National des Pensions, by Roger Masyn, General Director, acting as Agent,

\* Language of the case: French.

the Commission of the European Communities, by Maria Patakia, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Cassamali, of the Office National des Pensions, represented by Georges Holvoet, Administrative Secretary, acting as Agent, and of the Commission of the European Communities, at the hearing on 12 December 1990,

after hearing the Opinion of the Advocate General at the sitting on 16 January 1991,

gives the following

### Judgment

- 1 By judgment of 19 March 1990, which was received at the Court on 29 March 1990, the Tribunal du Travail, Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 51 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal English Special Edition 1971 (II), p. 416).
- 2 Those questions were raised in proceedings between Mrs Cassamali and the Office National des Pensions (hereinafter referred to as 'the ONP'), which is the competent Belgian institution for the payment of old-age pensions.
- 3 It is apparent from the documents that Mrs Cassamali had worked in Italy and Belgium.

- 4 Her working career entitled her to the grant of a retirement pension in Italy and two retirement pensions, one as an employed person, and the other as a self-employed person, in Belgium. Her entitlement to retirement pension began in both States from 1 October 1976. At that date the total amount of the three pensions was BFR 78 868.
  
- 5 From the same date, Mrs Cassamali, whose husband had, before his death, worked in Belgium, was also able to draw a survivor's pension under Belgian legislation. Its amount should have been BFR 98 127.
  
- 6 However, in calculating the survivor's pension, the competent Belgian institution, the Caisse Nationale des Pensions de Retraite et de Survie, which was replaced by the ONP in 1987, took account of the rule against overlapping laid down in Article 52 of the Belgian Royal Decree of 21 December 1967. Under that rule a survivor's pension may not be aggregated with one or more retirement pensions or any other benefit awarded in their stead under Belgian or foreign legislation beyond a certain limit.
  
- 7 In Mrs Cassamali's case, that limit was BFR 139 227 on 1 October 1976, whereas the total amount of the Belgian and Italian retirement pensions and the Belgian survivor's pension which she would have been able to claim was BFR 176 995 and thus exceeded the limit by BFR 37 718. The survivor's pension finally awarded by the Belgian institution was therefore reduced by that amount, thus reducing it from BFR 98 127 to BFR 60 409 on 1 October 1976.
  
- 8 On subsequent payment dates, the Belgian institution continued to calculate the amount of the survivor's pension in such a way that the aggregate amount of the pensions paid to Mrs Cassamali did not exceed the limit fixed by the national rules. Owing to the considerable increase in the Italian retirement pension through the application of the indexation rules in Italy, the actual amount of the survivor's pension payable to Mrs Cassamali was reduced.

9 Mrs Cassamali thereupon brought an action before the Tribunal du Travail, Brussels, claiming that that method of calculating was contrary to the provisions of Article 51(1) of Regulation No 1408/71.

10 Those were the circumstances in which the Tribunal du Travail, Brussels, by judgment of 19 March 1990, stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

‘Does Article 51 of Regulation No 1408/71 enable a Belgian pension to be recalculated as a result of an increase in an Italian pension which is due solely to cost of living increases?’

If not, does any other provision of Community law authorize such a recalculation?’

11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

12 In the light of the documents forwarded by the national court, those two questions, which should be considered together, must be understood as seeking to ascertain whether, in a situation where under national rules against the overlapping of benefits the pension paid to a worker by a Member State has been calculated at an amount such that, when added to the amount of a benefit of any kind paid by another Member State, it does not exceed a certain ceiling, Article 51(1) of Regulation No 1408/71, or any other provision of Community law, allows the amount of that pension to be adjusted in order to prevent that ceiling from being exceeded if subsequent alternations are made to the other benefit on account of the general evolution of the economic and social situation.

13 When calculating the amount of old-age benefits payable to a worker who has been subject to the legislation of two or more Member States, the competent institution in each Member State must draw a comparison between the amount

payable under the national legislation alone, including its rules against overlapping, and the amount resulting from the application of Article 46 of Regulation 1408/71. For the calculation of each benefit, the worker must enjoy the benefit of whichever system is most favourable to him.

- 14 As the Court pointed out, in particular in its judgment of 21 March 1990 in Case C-85/89 *Ravida v Office National des Pensions* [1990] ECR I-1063, any subsequent alteration in any one of the benefits implies in principle that a fresh comparison is to be carried out, for each benefit, between the national system and the Community system in order to determine which is the more advantageous to the worker following the alteration.
- 15 In the same judgment, however, the Court stated that, in order to reduce the administrative burden which a fresh examination of the worker's situation following every alteration of benefits would represent, Article 51(1) of Regulation No 1408/71 excluded a recalculation of benefits in accordance with Article 46 and, hence, a fresh comparison between the national system and the Community system when the alteration which affected one of the benefits resulted from events unconnected with the worker's personal circumstances and was the consequence of the general evolution of the economic and social situation.
- 16 Only when the adjustment is due to an alteration of the method of determination or the rules for calculating a benefit by reason, *inter alia*, of a change in the worker's personal circumstances is it necessary under Article 51(2) of Regulation No 1408/71 to carry out a recalculation of the old-age benefits.
- 17 Consequently, as it is also apparent from the judgment in the *Ravida* case, even if, in a situation such as that at issue in the main proceedings, the survivor's pension paid by a Member State to a worker has been limited, when first calculated, to a certain ceiling, by virtue of rules against overlapping contained in that State's legislation, in order to take account, in particular, of a retirement pension paid by another Member State to the same worker, Article 51(1) prohibits the recalculation of the survivor's pension as a result of revalorizations of the retirement pension when those revalorizations are a consequence of the general evolution of the economic and social situation.

- 18 It is true that in its observations to the Court the ONP contended that the recalculation which Article 51(1) prohibits is simply the calculation, provided for by Article 46, for comparing the benefit available under the national rules with that available under the Community rules. In the ONP's view, the recalculation of the amounts of the survivor's pension that it carried out in order to ensure that, in spite of the increases in the retirement pension paid by the other Member State, the limit laid down by the national rules against overlapping was observed is not the comparative calculation prohibited by Article 51(1) of Regulation No 1408/71.
- 19 That argument must be rejected.
- 20 In the situation under consideration, the increases occurring as a result of the general evolution of the economic and social situation prevailing in the State responsible for payment must, as the provisions of Article 51(1) themselves indicate, be applied directly to that pension. Whether it was calculated under the provisions of the national rules alone or under Article 46 of Regulation No 1408/71, the survivor's pension must not be affected by those increases and, in particular, it must not be adjusted even in order to ensure that the national rule setting an overlapping limit continues to be observed. Such an adjustment could be made only if it is previously ensured that the survivor's pension so adjusted remains at least as advantageous on continuing to apply the rules — of either the Member State concerned or the Community — according to which it was originally calculated as when the other rules are applied; that entails a fresh comparison of the two sets of rules, which is precisely what Article 51(1) of Regulation No 1408/71 rules out.
- 21 Finally, it needs to be stated that there is no other provision of Community law which would authorize a recalculation of benefits in cases in which this is prohibited by Article 51(1) of Regulation No 1408/71.
- 22 Thus, apart from the cases referred to in Article 51(2) in which the method of determining or the rules for calculating benefits are altered, the only alterations which may be made to an old-age benefit are the alterations, in percentage or absolute terms, resulting from national indexation rules applied by the State from

which the benefit is due. This, however, cannot be affected, either directly or indirectly, by the alteration of any other benefit arising from one of the causes listed in Article 51(1).

- 23 The answer to the two preliminary questions submitted by the national court must therefore be that, in a situation where under national rules against the overlapping of benefits the pension paid to a worker by a Member State has been calculated at an amount such that, when added to the amount of a benefit of any kind paid by another Member State, it does not exceed a certain ceiling, neither Article 51(1) of Regulation No 1408/71 nor any other provision of Community law allows the amount of that pension to be adjusted in order to prevent that ceiling from being exceeded if subsequent alterations are made to the other benefit on account of the general evolution of the economic and social situation.

#### **Costs**

- 24 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Tribunal du Travail, Brussels, by judgment of 19 March 1990, hereby rules:

**Where, under national rules against the overlapping of benefits the pension paid to a worker by a Member State has been calculated at an amount such that, when added to the amount of a benefit of any kind paid by another Member State, it does not exceed a certain ceiling, neither Article 51(1) of Regulation (EEC) No**

1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community nor any other provision of Community law allows the amount of that pension to be adjusted in order to prevent that ceiling from being exceeded if subsequent alterations are made to the other benefit on account of the general evolution of the economic and social situation.

Moitinho de Almeida

Grévisse

Zuleeg

Delivered in open court in Luxembourg on 20 March 1991.

J.-G. Giraud

Registrar

J. C. Moitinho de Almeida

President of the Third Chamber