JUDGMENT OF THE COURT (THIRD CHAMBER)
16 SEPTEMBER 1982 [1]

Rijksdienst voor Werknemerspensioenen v Alice Vlaeminck (reference for a preliminary ruling from the Arbeidshof, Ghent)

(Social security — Overlapping of benefits and minimum benefits)

Case 132/81

Reference for a preliminary ruling — Jurisdiction of the Court — Limits — Question purposeless — No need to give a ruling
(EEC Treaty, Art. 177)

In proceedings under Article 177 of the EEC Treaty the Court cannot give a ruling on a question when, in the light of the factual and legal circumstances of the main proceedings, it is not possible to glean from that question the factors necessary for an interpretation of Community law which the national court might usefully apply in order to resolve, in accordance with that law, the dispute before it.

In Case 132/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bruges Division of the Arbeidshof, Ghent, for a preliminary ruling in the case pending before that court between

RIJKSDIENST VOOR WERKNEMERSPENSIOENEN, Brussels,

and

ALICE VLAEMINCK, residing in Bruges,

1 — Language of the Case: Dutch

on the interpretation of certain provisions of Regulation 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: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1 Mrs Alice Saelens, nee Vlaeminck, a widow, was in paid employment in Belgium from 1926 to 1929 and from 1932 to 1933 and in France from 1931 to 1936. Her late husband worked in Belgium from 1926 to 1929 and from 1940 to 1942 and worked in France as a frontier worker from 1930 to 1939.

By an administrative decision of 9 August 1971 the Rijksdienst voor Werknemerspensioenen [National Pensions Office for Employed Persons, hereinafter referred to as "the Belgian Institution"] granted Mrs Saelens as from 1 September 1971 a retirement pension of $^{21}/_{40}$ calculated on the basis of the fraction $^{1}/_{40}$ per year and corresponding to the period of insurance of 25 years completed by her in Belgium. As from the same date she was also granted a survivor's pension of $^{17}/_{17}$ corresponding to the period of insurance of 17 years completed by Mr Saelens both in Belgium and in France.

It appears from the information supplied by the Belgian Institution at the request of the Court that the survivor's pension was calculated solely on the basis of the Belgian pension scheme since no right to a survivor's pension had been acquired in France. The Belgian Institution applied, in particular, Article 18 (6) of Royal Decree No 50 of 24 October 1967 on retirement and survivor's pensions for employed persons. As regards frontier workers, that paragraph provides:

"... the widow of an employed person may receive a survivor's pension equal to the difference between the survivor's pension which she would receive if that activity had been performed in Belgium and the pension which is received in respect of the same activity under the legislation of the country of employment.

That pension shall represent a minimum pension. However, for the purposes of Article 50 of Regulation No 1408/71 of the Council of the European Communities on the application of social security schemes to employed persons and their families moving within the Community, no account shall be taken of the foreign pension in determining that minimum."

The amount of the survivor's pension of 1/2 was however reduced. According to the information given by the Belgian Institution, the reduction was based on the rule against the overlapping of benefits contained in Article 52 of the Royal Decree of 21 December 1967 laying down general rules on the retirement and survivor's pension schemes for employed persons. By virtue of that provision a survivor's pension may overlap with one or more retirement pensions only up to an amount equal to 110% of the amount of the survivor's pension.

By a decision notified on 19 July 1971 the Caisse Régionale d'Assurance Maladie du Nord de la France [Regional Sickness Insurance Fund of Northern France, hereinafter referred to as "the French Institution"] granted Mrs Saelens, also with effect from 1 September 1971, a proportional retirement pension corresponding to the period of insurance of 69 months completed by her in France.

By a decision of 25 November 1976 the French Institution also granted her, with effect from 1 January 1973, a proportional survivor's pension corresponding to the period of insurance of 111 months completed by Mr Saelens in France. However, the latter pension was reduced to nil with effect from the same date on the following ground: "Personal Belgian and French pensions may not overlap with the survivor's pensions". The French Institution relied on Article 12 of Regulation No 1408/71 and Article 7 of Regulation No 574/72. It thus reduced the French survivor's pension by the amount of the Belgian and French retirement pensions (which it thought to be higher than the survivor's pension).

That decision by the French Institution caused the Belgian Institution to review of its own motion the Belgian survivor's pension paid to Mrs Vlaeminck whilst leaving her Belgian retirement pension unchanged. By decision of 11 January 1977 the Belgian Institution granted her, as from 1 January 1973, a proportional survivor's pension of 1/2 in the sum of BFR 30 312 *per annum*, calculated in accordance with Article 46 of Regulation No 1408/71 and corresponding solely to the period of insurance of seven years which Mr Saelens had completed in Belgium. That proportional pension was not reduced pursuant to Article 52 of the

Royal Decree of 21 December 1967. The Belgian Institution also informed her that the "minimum benefit" was $^{17}/_{17}$, that is to say BFR 73 617. The decision of 11 January 1977 also states as follows:

"The Belgian survivor's pension may only overlap with one or more retirement pensions up to a limit of 110% of BFR 73 617 × $^{17}/_{17}$ = BFR 80 979.

Consequently, your Belgian survivor's pension is reduced as from 1 January 1973 pursuant to Article 12 of Regulation (EEC) No 1408/71 and of Article 7 of Regulation (EEC) No 574/72."

According to the information supplied by the Belgian Institution at the request of the Court, the supplementary amount of $^{10}/_{17}$ calculated in accordance with Article 18 (6) of Royal Decree No 50 and corresponding to the period of insurance of 10 years completed by Mr Saelens in France was withdrawn on the ground that the proportional survivor's pension granted under Community regulations was higher than the survivor's pension payable solely under the relevant Belgian legislation.

2. Mrs Saelens applied to the Arbeidsrechtbank [Labour Tribunal], Bruges, for an order setting aside the decision adopted by the Belgian Institution on 11 January 1977 reducing her Belgian survivor's pension pursuant to Regulation Nos 1408/71 and 574/72 on the ground that the French pension was neither granted nor paid.

In its judgment of 13 June 1979 the Arbeidsrechtbank, Bruges, set aside the decision of the Belgian Institution on the ground of lack of adequate reasoning susceptible of judicial review.

The Belgian Institution appealed to the Bruges Division of the Arbeidshof [Labour Court], Ghent, seeking the reversal of the judgment appealed against and confirmation of the administrative decision which it took on 11 January 1977. In its grounds of appeal the Belgian Institution argued that Community law does not require the rules against the overlapping of benefits to be applied by one Member State, in this case France, in such a way that they result in a larger supplement in another Member State, in this case Belgium.

Considering that a decision of the Court of Justice was necessary to enable it to give judgment, the Bruges Division of the Arbeidshof, Ghent, stayed the proceedings and referred to the Court of Justice pursuant to Article 177 of the EEC Treaty the question:

"whether pursuant to Regulation No 1408/71 the rules against the overlapping of benefits may once more be applied in Belgium to a survivor's pension awarded in France to a Belgian but not made payable."

The Arbeidshof pointed out that:

"The claimant was awarded a survivor's pension of FF 1 418 from 1 January 1973 in France but by virtue of Article 12 of Regulation (EEC) No 1408/71 and Article 7 of Regulation (EEC) No 574/72 it was declared not to be payable; the Rijksdienst voor Werknemerspensioenen awarded the claimant an unchanged retirement pension but the survivor's pension was reduced by the French survivor's pension pursuant to the rule against the overlapping of benefits contained in the aforesaid EEC regulations."

3. The order for reference was received at the Court Registry on 3 June 1981.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Alice Saelens, represented by J. Lierman, by the Italian

Government represented by Arnaldo Squillante, acting as Agent, and by Pier Giorgio Ferri, Avvocato dello Stato, and by the Commission of the European Communities, represented by John Forman and Pieter Jan Kuyper, members of its Legal Department, acting as Agents.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, by order of 25 November 1981, to assign the case to the Third Chamber, pursuant to Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry. It none the less requested the Rijksdienst voor Werknemerspensioenen to supply further information about the calculation of the pensions received by Mrs Saelens.

II — Written observations

1. *Mrs Saelens* refers to her pleadings in the main proceedings. She maintains that by virtue of Article 18 (6) of Royal Decree No 50 she is entitled, as the widow of an employed person, to a survivor's pension equal to the difference between the survivor's pension which she would receive if that activity had been performed in Belgium and the pension which is received in respect of the same activity under the legislation of the country of employment. The French survivor's pension ought not to be taken into account since that pension is not in fact being paid as a result of the application of the rules against the overlapping of benefits contained in Regulation No 1408/71.

Belgian legislation guarantees minimum benefits within the meaning of Article 50 of Regulation No 1408/81. By virtue of that provision the additional amount to be paid is equal to the difference between the sum of the benefits due and the amount of the minimum benefit, namely in the present case BFR 73 617.

2. The *Italian Government* points out that the independent application of the rules against the overlapping of benefits by Member States may lead to distortions which it is necessary to correct and eliminate by defining the limits of application of those rules.

Previous decisions of the Court seem to be based on the notion that there is no interference between the relevant Community rules and national rules. It does not, however, follow that the manner in which the national institutions recognize rights to pensions acquired autonomously can have no importance for the Community rules.

On the contrary, it would be incompatible with the coordinating function of the Community legislation to concede that Member States may, by having regard to payments made in other Member States, reduce national benefits in a discretionary manner which is not open to review. That is evident in particular from Article 12 of Regulation No 1408/71, the effect of which is to determine the limits of application of national provisions against the overlapping of benefits, precisely in order to achieve coordination.

3. The *Commission* is of the opinion that the Belgian Institution by replacing the full survivor's pension of 1/1 guaranteed by Article 18 (6) of Royal Decree No 50 by a proportional survivor's pension determined under

Article 46 of Regulation No 1408/71, applied no rule against the overlapping of benefits. The reduction in the pension stems rather from the fact that the additional amount of $^{10}/_{17}$ is no longer granted since the French survivor's pension has been granted. As a result there is no dual application of the rules against the overlapping of benefits by the Belgian Institution but an application, which in itself is correct, of Article 46 (2) (b) of Regulation No 1408/71.

Proceeding on that assumption, the Commission considers that the question to be resolved in the present case is whether the grant of a proportional French survivor's pension which was not paid owing to the application of rules against the overlapping of benefits gives the Belgian Institution a legitimate reason for itself awarding a proportional survivor's pension instead of the full pension guaranteed by Article 18 (6) of Royal Decree No 50. The problem thus seems to be reduced to the question what that guaranteed pension is composed of, but that question is not one of Community law but one of national law.

In the first place, it should be remembered that the "minimum pension" of the Belgian rules is not a Community pension and cannot be determined by applying Community rules. It is for the Member States to lay down the minimum benefits within the meaning of Article 50 of Regulation No 1408/71 on the basis of their national legislation.

Secondly, the Commission maintains that the minimum pension within the meaning of the Belgian legislation is not in a general way a minimum benefit within the meaning of Article 50 of Regulation No 1408/71. That clearly emerges from the judgment of the Court of 30 November 1977 in Case 64/77 (*Torri* [1977] ECR 2299).

In the light of that judgment the Commission puts forward two arguments militating against the view that the present case involves a minimum benefit within the meaning of Article 50 of Regulation No 1408/71.

Initial support may be gleaned from the fact that the provision contained in Article 18 (6) of Royal Decree No 50 does not appear in the declaration made by Belgium pursuant to Article 5 of Regulation No 1408/71. By virtue of that provision Member States are to specify *inter alia* the minimum benefits referred to in Article 50 in declarations to be notified and published.

Further support may be found in the fact that the minimum pension by virtue of Belgian legislation coincides with the theoretical amount of benefit under Article 46 (2) (a) of Regulation No 1408/71. In the judgment mentioned above the Court rejected the argument that the minimum pension must be equal to the theoretical pension.

The Commission concludes that the "minimum pension" referred in Article 18 (6) of Royal Decree No 50 does not constitute a minimum benefit within the meaning of Article 50 of Regulation No 1408/71. In any event, the question of the composition of that minimum pension and of the size of the additional amount to be paid by the Belgian Institution is not a question of Community law but of national law and therefore is a matter for the national courts.

III — Oral procedure

At the sitting on 4 February 1982 the Rijksdienst voor Werknemerspensionen, represented by Guy Auwerx, acting as Agent, and the Commission of the

European Communities, represented by Pieter Jan Kuyper, a member of its Legal Department, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 25 March 1982.

IV — Reopening of the oral procedure

By order of 28 May 1982 the Court (Third Chamber) decided to reopen the oral procedure and instructed the Judge-Rapporteur to carry out the necessary preparatory measures. The Judge-Rapporteur put supplementary questions to the Belgian Institution and to the French Government.

1. The Belgian Institution was invited to explain whether Mrs Saelens, pursuant to the Belgian Institution's decision of 11 January 1977, was receiving a Belgian survivor's pension lower than that which she received previously on the basis of the Belgian Institution's decision of 9 August 1971 and whether Mrs Saelens' retirement pension, also granted by the latter decision, had remained unchanged as a result of the decision to review of 11 January 1977.

In its reply the Belgian Institution stated that the decision of 11 January 1977 had left intact the retirement pension granted to Mrs Saelens by the decision of 9 August 1971. That pension, calculated according to the relevant index, amounts to BFR 49 572.

On the other hand, the Belgian Institution stated that the decision of 11 January 1977 involved the payment of a survivor's pension (BFR 30 312) higher than that which had been granted previously (BFR 25 761). In fact, although in the decision of 9 August 1971 the survivor's pension was calculated on the basis of BFR 73 617, that amount was then reduced to BFR 25 761 in application of the rule against the overlapping of benefits contained in Article 52 of the Royal Decree of 21 December 1967. On the other hand, the proportional survivor's pension, calculated at BFR 30 312 by the reviewed decision of 11 January 1977, was not reduced in application of that rule, whose effect on the proportional pension is limited by Article 7 (1) (b) of Regulation No 574/72. By virtue of that provision the benefit which gives rise to the application of the rule against the overlapping of benefits may be taken into account only in respect of the part of the amount which is determined by multiplying the amount in question by the proportion on the basis of which the benefit to which the rule against overlapping is to be applied was calculated. As a result of the application of that Community provision in the present case the overlapping limit laid down by national law (BFR 73 617 × 110 % = BFR 80 979) was exceeded.

In conclusion the Belgian Institution states that the reviewed decision of 11 January 1977 granted Mrs Saelens a proportional survivor's pension higher than that which had been granted by the decision of 9 August 1971, having regard to the Belgian rules against the overlapping of benefits and to the provisions of the regulations which apply in the present case.

2. The *French Government* was invited, pursuant to the second paragraph of Article 21 of the Protocol on the Statute

of the Court of Justice of the EEC, to explain under which provision of national or Community law the French Institution in its decision of 25 November 1976 calculated the survivor's pension due to Mrs Saelens at FF 1 418 and reduced that amount to nil.

In its reply the French Government stated that the French Institution, in determining the amount of the survivor's pension due to Mrs Saelens had applied Article 12 of Regulation No 1408/71. Because old-age pensions and the survivor's pension were benefits of a different nature under French legislation, it had been decided that application should be made of the rules against the overlapping of personal old-age benefits and survivor's benefits laid down in domestic French legislation, in this case Law No 75-3 of 3 January 1975 and Decree No 75-109 of 24 February 1975.

By virtue of the rules applicable on 1 July 1974 the surviving spouse may accumulate the survivor's pension with his or her personal old-age benefits either up to one half of the sum of those benefits and of the main pension enjoyed by the insured and used as the basis for the calculation of the survivor's pension, or up to the sum of the minimum old-age pension provided for in Article L 345 of the Social Security Code and the supplementary award made by the National Solidarity Fund. However, in order to put those provisions into effect the French Institution adjusted the whole of the benefits in question in accordance with the insurance periods completed pursuant to Article 7 (1) (b) of Regulation No 574/72.

In the present case no survivor's pension was paid by the French Institution since the personal benefits received by the claimant exceeded the most advantagous overlapping limit for the claimant.

3. At the sitting on 15 July 1982 the Rijksdienst voor Werknemerspensioenen, represented by Guy Auwerx, acting as Agent, presented supplementary oral argument.

The Advocate General delivered a supplementary opinion at the sitting on the same day.

Decision

1 By an order of 22 May 1981, which was received at the Court on 3 June 1981, the Bruges Division of the Arbeidshof [Labour Court], Ghent, referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of certain provisions of Regulation 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 That question was raised in the course of proceedings between Mrs Saelens, née Vlaeminck, and the Rijksdienst voor Werknemerspensioenen [National Pensions Office for Employed Persons, hereinafter referred to as the "Belgian Institution"].

3 Mrs Saelens was employed in Belgium from 1926 to 1929 and from 1950 to 1970, and in France from 1931 to 1936. Her deceased husband was employed in Belgium from 1926 to 1929 and from 1940 to 1942, and as a frontier worker in France from 1930 to 1939.

4 In 1971 the Belgian Institution granted Mrs Saelens a retirement pension of $^{25}/_{40}$, acquired at the rate of $^{1}/_{40}$ *per annum*, corresponding to her 25 years of employment in Belgium. The same year, the Caisse Régionale d'Assurance Maladie du Nord de la France [Regional Sickness Insurance Fund of Northern France, hereinafter referred to as the "French Institution") likewise granted her a retirement pension on the basis of her period of employment in France.

5 In 1971 the Belgian Institution also granted Mrs Saelens a survivor's pension of $^{17}/_{17}$ on the basis of the 17 years of employment which her husband had completed both in Belgium and in France. The latter pension was granted to her pursuant to Article 18 (6) of Belgian Royal Decree No 50 of 24 October 1967 on retirement and survivor's pensions for workers, which provides, as regards employment as a frontier or seasonal worker in a neighbouring country, that the widow of the worker may obtain a survivor's pension equal to the difference between the amount of the survivor's pension which she would receive if that activity had been performed in Belgium and the pension which is received in respect of the same activity under the legislation of the country of employment. Article 18 (6) further states that that pension represents a "minimum pension" but, for the purposes of Article 50 of Regulation No 1408/71, no account is to be taken of the foreign pension in determining that minimum pension.

6 It appears from the evidence before the Court, and in particular from the information supplied by the Belgian Institution during the course of the procedure, that the Belgian Institution calculated the survivor's pension by also taking into consideration the 10 years of employment completed by Mr Saelens as a frontier worker in France on the ground that no right to a survivor's pension had been acquired in that Member State. The amount of

that pension was however limited, pursuant to the rule against the overlapping of benefits contained in Article 52 of the Belgian Royal Decree of 21 December 1967 laying down general rules on the retirement and survivor's pension schemes for employed workers. By virtue of that provision a survivor's pension may overlap with one or more retirement pensions only up to an amount equal to 110 % of the amount of the survivor's pension.

7 In 1976 the French Institution granted Mrs Saelens a proportional survivor's pension, payable under Article 46 of Regulation No 1408/71, on account of Mr Saelens' period of employment in France. That pension was, however, reduced to nil, in application of the rules against the overlapping of personal old-age benefits and survivor's benefits laid down by French legislation.

8 The acquisition of the right to receive a survivor's pension in France, even though the pension was reduced to nil, prompted the Belgian Institution to review the Belgian survivor's pension. By a decision of 11 January 1977 the Belgian Institution granted Mrs Saelens a survivor's pension corresponding to the fraction $^{7}/_{17}$, that is to say, on the basis of Mr Saelens' seven years of employment in Belgium to the exclusion of the 10 years of employment in France. That pension constitutes a proportional pension calculated in accordance with Article 46 of Regulation No 1408/71, in which therefore the additional amount of $^{10}/_{17}$, calculated in accordance with Article 18 (6) of Royal Decree No 50, is no longer included, but which, on the other hand, is not reduced in accordance with the rule against the overlapping of benefits contained in Article 52 of the Royal Decree of 21 December 1967. According to the information given by the Belgian Institution, the proportional pension was paid since it was higher than the pension which would have been payable under Belgian law alone. That pension was consequently higher than the survivor's pension which the claimant received before the contested decision was adopted.

9 Mrs Saelens applied to the Arbeidsrechtbank [Labour Tribunal, Bruges], for an order setting aside the Belgian Institution's decision of 11 January 1977. Such an order was granted on the ground that there was an absence of reasoning susceptible of judicial review. The Belgian Institution appealed to the Arbeidshof [Labour Court], Ghent.

10 Considering that a ruling by the Court of Justice was necessary to enable it to give judgment, the Bruges Division of the Arbeidshof, Ghent, referred to the Court the question:

"... whether pursuant to Regulation No 1408/71 the rules against the overlapping of benefits may once more be applied in Belgium to a survivor's pension awarded in France to a Belgian but not made payable."

The Arbeidshof pointed out that:

"The claimant was awarded a survivor's pension of FF 1 418 from 1 January 1973 in France but by virtue of Article 12 of Regulation (EEC) No 1408/71 and Article 7 of Regulation (EEC) No 574/72 it was declared not to be payable; the Rijksdienst voor Werknemerspensioenen awarded the claimant an unchanged retirement pension but the survivor's pension was reduced by the French survivor's pension pursuant to the rule against the overlapping of benefits contained in the aforesaid EEC regulations."

11 It is clear from the foregoing that the survivor's pension granted to Mrs Saelens by the decision of the Belgian Institution of 11 January 1977 results not from the application of a rule against the overlapping of benefits, dependent upon the acquisition of a right to a survivor's pension in France, but constitutes a proportional pension based on the application, which in itself is correct, of Article 46 of Regulation No 1408/71. Contrary to the assumption made by the national court, there was not therefore dual application of the rules against the overlapping of benefits.

12 It is also clear from the foregoing considerations that Mrs Saelens' survivor's pension was reduced proportionately pursuant to Article 46 of Regulation No 1408/71, since the pension thus calculated was higher than the pension which would have been received under Belgian legislation alone, that is to say increased by the additional amount of [illegible], pursuant to Article 18 (6) of Royal Decree No 50, but then reduced in application of the rule against the overlapping of benefits contained in Article 52 of the Royal Decree of 21 December 1967.

13 In view of that factual situation the preliminary question appears to lack any purpose. It is not possible to glean from it the factors necessary for an interpretation of Community law which the national court might usefully apply in order to resolve, in accordance with that law, the dispute before it.

14 It follows that in the light of the factual and legal circumstances of the main proceedings no question of Community law is raised in the present case, so that the Court is unable to give a ruling, in the context of proceedings under Article 177, on the question referred to it by the Arbeidshof, Ghent.

15 In those circumstances no reply need be given to the question referred by the national court.

Costs

16 The costs incurred by the Italian and French Governments and by the Commission, which have submitted observations to the Court, are not recoverable. As 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 question referred to it by the Arbeidshof, Ghent, by order of 22 May 1981, hereby rules:

No reply need be given to the question referred by the national court.

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 16 September 1982.

J. A. Pompe
Deputy Registrar

A. Touffait
President of the Third Chamber