OPINION OF ADVOCATE GENERAL LA PERGOLA
delivered on 4 July 1996 *

1. The questions on which the Second Chamber of the Cour du Travail (Labour Court), Liège, seeks a preliminary ruling concern the interpretation of Article 36(4) of Regulation (EEC) No 574/72 of the Council in relation to the procedures for submitting a claim for social security benefits. [1] The interpretation sought by the national court concerns the relationship between that provision and paragraphs 1, 2 and 3 of the same article. The essential issue is whether the date of submission of a claim for benefit to an institution responsible for payment thereof must also be regarded as the date of presentation for the purposes of any contribution from the social security institutions of other Member States which are responsible for paying a proportion of the same benefit to the person concerned.

Facts

2. The facts of the case are, briefly, as follows. On 11 April 1991, Mr Picard (also referred to hereinafter as 'the claimant'), a French national residing in Belgium, submitted a claim for an old-age pension to the competent French social security institution. The administration accepted the claim and awarded a pension payable from 1 January 1992.

3. In accordance with specific directions from the French administration, on 11 June 1992 Mr Picard also forwarded, through the municipal Council of Verviers (where he lives), a claim for a pension from the Belgian institution responsible for paying social security benefits to self-employed persons: Institut National d'Assurances Sociales pour Travailleurs Indépendants (hereinafter 'Inasti').

4. By decision of 21 December 1992, the latter institution refused Mr Picard's claim for an early retirement pension. When he made his claim, he did not meet the requirements

* Original language: Italian.

1 — Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 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 by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 No L 230, p. 86).

for entitlement to a pension under Belgian law. [2]

On 27 January 1993, apprised of the fact that a pension had been awarded by the competent French institution. Inasti adopted a new decision by which, although refusing Mr Picard a retirement pension under national legislation, awarded him a pro rata pension and consequently determined the amount payable by it 'pursuant to Regulations (EEC) Nos 1408/71 and 574/72'. [3]

At the same time, the date for the inception of that benefit was fixed as 1 July 1992, that is to say a later date than the starting date for the pension paid by the French institution.

5. According to Inasti the adoption of that different starting date — and this is the point of interpretation at issue — is a matter of Belgian law. Under the applicable legislation — according to Inasti — claims for pensions must be submitted to the municipal authorities where the claimant lives; also, the pension cannot be paid before the first day of the month following that in which the claim was submitted. [4] Under those provisions of national law, the starting date was in its opinion lawfully determined as 1 July 1992. As stated earlier, Mr Picard did not submit his claim for a retirement pension to the municipal authorities of Verviers until 11 June 1992.

6. By decision of 18 November 1994, the Tribunal du Travail (Labour Tribunal), Verviers, before which Mr Picard had commenced proceedings, upheld Inasti's decision as regards the amount of the pension awarded to him but, unlike Inasti, it considered that the date for commencement of payment of the proportion of the pension payable by that institution should have been — pursuant to Article 36(4) of Regulation No 574/72 —1 January 1992, namely the date on which the pension was awarded by the competent French institution.

2 — Under Belgian law the right to an old-age pension arises — unless the conditions are met for an early retirement pension (which was not the case here since Mr Picard had not worked as a self-employed person in Belgium for five calendar years) — on attainment of 65 years of age. That is presumably why Mr Picard — born on 24 December 1931 and therefore only 60 at the material time — applied first to the competent French institution.

3 — The words quoted are from the observations submitted by Inasti in these proceedings (p. 2). There is also a reference to Community regulations in Inasti's own decision of 27 January 1993. As regards determination of the actual amount of the social security benefit, it should be noted that Mr Picard worked in Belgium from 1 January 1981 to 30 June 1982 and from 1 January 1985 to 31 March 1988. The amount payable by the Belgian institution was therefore calculated by reference to the proportion which those periods bore to his entire working life in France and Belgium.

4 — The rule on the inception date is contained in Article 3(3) of Arrêté Royal No 72 of 10 November 1967 concerning old-age and survivors' pensions for self-employed persons; the provision which determines that pension claims are to be submitted to the mayor of the municipality where the claimant resides is Article 120(1) of the Arrêté Royal of 22 December 1967 laying down general provisions on old-age and survivors' pensions for self-employed persons. For the actual wording of the relevant national provisions, see Part II (National legislation) of the Report of the Judge-Rapporteur.

7. The Cour du Travail (Labour Court), to which Inasti appealed, has referred the following questions to the Court of Justice for a preliminary ruling:

'1. Does Article 36(4) of Regulation No 574/72 lay down a general independent rule which is applicable regardless of whether the provisions of Article 36(1), (2) and (3) have been complied with?

2. If the reply to the first question is in the negative, is an employed or a self-employed person who cannot, without prior recognition of entitlement to a pension by the competent institution of another Member State (in the present case, the Member State of which he is a national), obtain recognition of entitlement to a pension by the competent institution of the State of residence still required to submit a claim in the State of residence in order for benefits to be awarded concurrently?'

8. In the course of the procedure, written observations have been lodged by Mr Picard, Inasti, the Commission and the French Government.

9. Before considering the merits of the questions referred to the Court, I shall place them in the wider context in which I believe they should be examined.

Legislative background

10. Mr Picard was subject, while working, to both French and Belgian legislation. Since he is seeking social security benefits due to him, a directly relevant provision is Article 44 of Regulation No 1408/71, ('General provisions for the award of benefits when a worker has been subject to the legislation of two or more Member States'), paragraph 2 of which provides:

'when *a claim for the award of a benefit* is lodged, such award must be made having regard to all the legislations to which the worker has been subject' (emphasis added).

11. Regulation No 574/72 lays down the procedures for applying Regulation No 1408/71. The provision whose interpre-

tation is at issue — in Chapter 3 ('Invalidity, old-age and death (pensions)') — lays down rules concerning pensions in respect of invalidity, old-age and death provided for in Chapter 3 of Regulation No 1408/71 (Old-age and death (pensions)). [5] Article 36 refers specifically to 'Claims for old age and survivors' benefits (excluding orphans' benefits) and invalidity benefits in cases not referred to in Article 35 of the implementing regulation'.

12. That article lays down the procedures under which a claim for benefit must be submitted by the worker. Pursuant to Article 36(1) the claimant '*shall* submit a claim to the institution of the place of residence' in accordance with the procedure provided for by the legislation in force there (emphasis added). If, on the other hand (Article 36(2)), the person concerned resides in the territory of a Member State to whose legislation he is not subject, he 'may submit his claim to the [competent] institution of the Member State to whose legislation [he] was last subject'. [6]

13. A further provision — paragraph 4 — fulfils in some respects a 'triggering' function. It provides that the submission of a claim is, unless the worker requests otherwise, to 'automatically involve' the concurrent award of benefits under the legislation of all the Member States in question whose conditions the claimant satisfies.

14. More particularly, Article 36(4) provides:

'A claim for benefits sent to the institution of one Member State shall automatically involve the concurrent award of benefits under the legislation of all the Member States in question whose conditions the claimant satisfies except where, under Article 44(2) of the Regulation, the claimant asks for postponement of any old-age benefits to which he would be entitled under the legislation of one or more Member States'.

Assessment

15. It must first be noted that in this case there is no dispute as to the claimant's entitlement to payment of the pro rata pension 'pursuant to the relevant Community rules'. As stated by Inasti itself in its observations, Mr Picard has a claim on the

5 — The provisions referred to are those of Articles 44 to 51 of the regulation. As far as invalidity pensions are concerned, those provisions apply by virtue of the reference thereto in Article 40(1) of that regulation.

6 — Finally, in paragraph 3 there is a further possibility which comes into play when the worker resides in the territory of a non-member country. In such circumstances, he '*shall* submit his claim to the competent institution of the Member State to whose legislation [he] was last subject' (emphasis added).

competent Belgian institution for a social security benefit of an amount commensurate with the periods of insurance completed in Belgium. The questions submitted thus relate solely to determination of the time from which the award of the benefit is to take effect.

16. The problem of interpretation arises from that fact that the procedures followed by Mr Picard in claiming his pension do not fall within any of the cases envisaged by Article 36(1) and (2). Although residing in Belgium, he initially submitted his claim only to the competent French institution. He thus did not fulfil the obligation laid down by Article 36(1) until 11 June 1992, when he submitted his pension claim, 'in accordance with the procedure provided for by the legislation administered' by Inasti, to the competent institution at his place of residence. [7] In those circumstances, the Belgian institution contends that, since he failed to satisfy the obligation laid down by the implementing legislation, the starting date for payment of the pro rata pension awarded to the claimant by Inasti must be determined in accordance with the national rules, irrespective of the date on which the claim was submitted to the competent French institution. [8]

17. The Commission and the French Government take different view. Both consider that this case should be examined in the light of the purposes of Regulation No 1408/71 and of the Treaty provisions on which that regulation is based. According to that approach, it is of no importance to which national institution the claim for a social security benefit was submitted as regards setting in motion the procedure for award of the benefit under the regulation. I share that view, for the following reasons.

18. The provisions of Regulation No 574/72 are intended to lay down the procedures for applying Regulation No 1408/71. Like the provisions of that regulation, the rules at issue here must be interpreted in accordance with the purposes pursued by Articles 48 and 51 of the Treaty. The most important of those purposes is the concern to ensure that migrant workers enjoy social security benefits regardless of their place of work or residence. [9]

19. That aim is the inspiration, as regards old-age, death and invalidity pensions, for the rules in Articles 44 to 51 of Regulation No 1408/71, which govern the operations of aggregation and calculation of those benefits. That criterion — which is of a general nature

7 — Mr Picard, having been subject to Belgian legislation whilst working, could not avail himself of the right granted by Article 36(2).

8 — According to Inasti, Article 36(4) of Regulation No 574/72, far from constituting an independent rule, merely determines the effects of a claim for benefit submitted in accordance with paragraphs 1, 2 and 3 of the same article.

9 — See the fifth recital in the preamble to Regulation No 1408/71.

and necessarily shapes all Community legislation in this sphere — applies both to the acquisition of social security rights and to the calculation of the benefits payable. [10]

20. Now, the principles underlying the provisions of the two regulations having been identified, it must be borne in mind that Article 44(2) of Regulation No 1408/71 provides that the starting date for the award of old-age pensions acquired under the legislation of one or more Member States by all the competent institutions involved is the date of submission of a '*claim* for the award' of the benefit (emphasis added).

21. The purport of that provision — and the principle underlying it — seem to me to be clear. The worker, according to the logic of the regulation, by submitting a claim fulfils the precondition for the award of the social security benefit to which he is entitled. And at that precise time arises the obligation of the competent institutions to cooperate with each other for the purposes of aggregation and apportionment.

22. That approach is also supported by the scheme of the Community rules at issue here. Article 36(1) of Regulation No 574/72 provides (albeit in relation to circumstances which cannot be assimilated to those of this case), that when the institution (of the place of residence, where it is not a competent institution) which has received the claim forwards it to the competent institution, it must indicate the 'the date on which the claim was submitted' and adds that ' *[t]hat date shall be regarded as the date on which the claim was submitted to the latter institution*' (emphasis added).

23. Thus, in the regulation, the criterion of proximity prevails over that of competence. By imposing the obligation of submitting the claim to the institution (whether or not competent) of the place of residence and requiring the latter to take steps to cooperate as necessary for the award of the pension, the intention was to make it easier for the worker to satisfy the bureaucratic requirements associated with the claim for the social security benefit by bringing the process closer to his locality and removing the need for applications to the competent institutions of the different countries where he has worked.

24. Also, Article 86 of Regulation No 1408/71 is manifestly based on the same criterion where it provides that 'any claim ... which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority ... of that State shall be admissible

10 — See the sixth recital in the preamble to Regulation No 1408/71.

if it is submitted within the same period to a corresponding authority ... of another Member State. In such a case the authority ... receiving the claim ... shall forward it without delay to the competent authority ... of the former State. *The date on which such claims ... were submitted to the authority ... of the second State shall be considered as the date of their submission to the competent authority ...*' (emphasis added).

25. The scheme of the regulation thus goes further. The provision set out above in my view means that, for the purpose of the starting point for award of benefits, it is irrelevant to which competent institution the claim was submitted. What is important is that there has become enshrined in the Community rules the principle that the date of submission of the claim to the institution of the competent State becomes binding also for the corresponding institutions in other Member States.

26. On close examination, the position could not be otherwise. The system laid down seeks, first, to simplify as far as possible the bureaucratic obligations of a worker with rights in various Member States; [11] secondly — and consequentially, it might be said — it seeks to confirm the obligations of cooperation between the social security institutions deriving from the provisions of Article 5 of the Treaty and expressly 'enshrined' in the rules. [12]

27. If that is the case, it must be concluded that the date of submission of the claim to the competent institution of a Member State is intended, under the scheme of the regulation, to serve as the date of submission for the operations leading to the award of the benefit to be carried out by all the institutions which, in their own spheres, are responsible for paying social security benefits to the migrant worker. Only if that approach is taken can the principle that the place of employment and that of residence are irrelevant — which, as stated, must be seen as the criterion inspiring the whole body of rules at issue — take full effect.

28. The governing principles having thus been identified, it must be inferred from them that the interpretation of Article 36 of Regulation No 574/72 advocated by Inasti is formalistic and is inimical, in a case like this one, to full enjoyment of the rights acquired by the worker, in that he would be forced to complete bureaucratic formalities in every Member State in which he had worked.

11 — Case 108/75 *Balsamo* [1976] ECR 375, paragraph 9; Case 41/77 *Warry* [1977] ECR 2085, paragraph 28.

12 — Case C-251/89 *Athanasopoulos* [1991] ECR I-2797, paragraph 57. See also Article 84 of Regulation No 1408/71 ('Cooperation between competent authorities') and in particular paragraphs 1, 2 and 3.

Moreover, the factual background disclosed in the course of Mr Picard's case provide an illuminating example of such formalities. And the consequence of raising unjustified obstacles to full enjoyment of the rights conferred by Regulation No 1408/71 in my opinion runs directly counter to the principles underlying Article 51 of the Treaty.

29. A further obstacle to acceptance of the view advanced by Inasti is to be found in the Court's dicta concerning the nature of the provisions of Regulation No 574/72. In *Iacobelli*, the Court held that the provisions of Article 36 are of a procedural nature. [13] They cannot therefore give rise to any substantive change in the legal position of a worker as recognized and guaranteed by Regulation No 1408/71 in the light of the abovementioned principles. In this case those provisions can have no impact on Mr Picard's right, recognized by the competent institution itself, to payment of a pro rata benefit determined in accordance with Community law by Inasti.

30. Accordingly, as the French Government rightly points out in its observations, the rule in Article 36(1) to the effect that the claimant 'shall' submit his pension claim to the institution of his place of residence must be read as a supplementary rule. It is a rule for implementation of the regulation, but is not one to which an exception cannot be made if the person concerned takes steps to obtain, by means of a claim submitted to the competent institution in another Member State, the social security benefits to which he is entitled. [14] That is all the more true, it must be added, where, as in this case, the claim was forwarded to the competent institution in the State of which the worker is a national and in which he spent most of his working life. Article 36(1) — in view of its nature and its aim of achieving administrative simplification — cannot have the effect of hampering or imposing conditions on the process of awarding the benefits at issue by fixing a date different from that on which the claim was submitted to the other institution responsible for paying the same social security benefit (in this case a retirement pension) under the Community regulation. The benefit is concurrent and payment of it is assured by fulfilment of the obligation of cooperation incumbent on the competent institutions in each case. [15] The claim — the

13 — Case C-275/91 [1993] ECR I-523, paragraph 13.

14 — In support of that interpretation it must also be stressed that the rules in question do not impose penalties on a worker who does not comply with the procedures for submitting claims laid down by Article 36(1), (2) and (3).

15 — No other conclusion is possible in a case — as outlined by the national court in its second question — where the worker's entitlement is recognized by the institution of a Member State solely on the basis of the existence of a pension paid by the institution of another Member State. The logical 'connection' underlying the acquisition of the worker's claim against the first institution means in fact, *inter alia* in order to avoid unjustified lacunae in the way he is treated for social security purposes, that concurrent benefits must be considered necessary. And not only that. In such circumstances it seems necessary, in this case too in the light of the clear need to simply bureaucratic formalities, to enable a worker to approach directly the institution responsible for paying the 'main' benefit, which affects any benefits paid by competent institutions in other States.

step taken by the person concerned to set the process in motion — in a system based on mobility of workers like that of Regulation No 1408/71, may perfectly well be the only one submitted. Otherwise, the aim of Article 44(2) of that regulation would be frustrated, as would, more generally, the principles underlying the entire body of rules at issue.

31. It follows from the foregoing considerations that the answer to be given to the first question submitted by the national court is that Article 36(4) of Regulation No 574/72 lays down a procedural rule independent from those contained in the first three paragraphs of that article. That provision — in direct conjunction with Article 44(2) of Regulation No 1408/71, concerning the prescribed conditions for commencement of the process of awarding the benefits — is to be construed as meaning that the date of submission of the claim for a social security benefit to the competent institution is to be regarded as the date of submission by each of the competent institutions involved in the process of calculating the same benefit under the legislation administered by them.

32. In view of the answer to the first question, the second question from the national court has become devoid of purpose.

Conclusion

Article 36(4) of Regulation (EEC) No 574/72 lays down a procedural rule independent from those contained in the first three paragraphs of that article and must be read in conjunction with Article 44(2) of Regulation (EEC) No 1408/71 as regards the effects of the claim for the award of benefits. Pursuant to the implementing regulation, the date on which the person concerned submits a claim for an award to a social security institution responsible for paying a social security

benefit constitutes the starting point which each of the other institutions responsible for paying it must regard as the date of submission of the claim for the purposes of the legislation administered by them.