JUDGMENT OF THE COURT
OF 17 DECEMBER 1975 [1]

Jacob Adlerblum
v Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés
(preliminary ruling requested by the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole, Paris)

Case 93/75

Summary

Questions referred for preliminary ruling — Nature of questions — National legislation — Interpretation — Pension — Classification in relation to another national legislative system — Lack of jurisdiction on the part of the Court (EEC Treaty, Article 177)

The Court has no jurisdiction to give a preliminary ruling on the question of the classification under the legislation of one Member State of a benefit awarded under the legislation of another Member State, as such a question pertains to national law alone.

In Case 93/75

Reference to the Court under Article 177 of the EEC Treaty by the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole, Paris, for a preliminary ruling in the action pending before that court between

JACOB ADLERBLUM, residing in Paris,

and

CAISSE NATIONALE D'ASSURANCE VIEILLESSE DES TRAVAILLEURS SALARIÉS, Paris area,

on the question whether a pension awarded by a Member State to a national of another Member State as compensation for injuries caused by persecution on racial grounds is in the nature of a social assistance benefit,

1 — Language of the Case: French.

THE COURT

composed of: R. Lecourt, President, H. Kutscher, President of Chamber, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen and Lord Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

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

I — Facts and procedure

Jacob Adlerblum, a French national, has received an old-age pension since 1 February 1974 owing to unfitness for work.

On 21 October 1974 Mr Adlerblum applied to the Caisse Nationale d'Assurance Vieillesse des Travailleurs salariés for the Paris area for the increase in the old-age pension in respect of a dependent spouse provided for in Article L 339 of the Code de la Sécurité Sociale and in Decree No 64-307 of 4 April 1964 which rescinds Article L 340 of the Code de la Securité Sociale and replaces it by regulations.

This application was dismissed by the Commission de Recours Gracieux of the Caisse by decision of 24 March 1975.

The decision of the Commission de Recours Gracieux is based upon Article 71 (6) of Decree No 45-0179 of 29 December 1945, which provides:

For the purposes of the award of the increase provided for in Article L 339 of the Code de la Sécurité Sociale and Decree No 64-307 of 4 April 1964, a spouse shall be regarded as dependent whose personal resources, assessed pursuant to the conditions laid down by Decree No 64-300 of 1 April 1964 and increased by a sum equal to the amount of the increase provided for by the abovementioned Decree No 64-307 of 4 April 1964, do not exceed the maximum figure for the award to single persons of the allowance to aged employed persons.

On 1 February 1974, the maximum figure fixed in respect of personal resources for the award of the allowance to aged employed persons was FF 6 400 per year and the increase provided for in Decree No 64-307 of 4 April 1964 was FF 2 450 per year. By virtue of a Decision of 13 July 1962 of the Pensions Department of the Land of North

Rhine-Westphalia (Federal Republic of Germany) Mrs Adlerblum receives a pension as compensation for injuries due to persecution on racial grounds of FF 10 915·32 per year under the Federal Law of 29 June 1956 (Bundesgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung — Bundesentschädigungsgesetz). Mrs Adlerblum's personal resources therefore exceed the maximum of FF 3 950 fixed in accordance with the Decree of 29 December 1945.

On 6 May 1975 Mr Adlerblum appealed against this decision to the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole, Paris. He maintained primarily that the pension paid to his wife as compensation for physical injuries suffered as a result of persecution was to be regarded as benefits granted by way of social assistance and that accordingly they should not be taken into account for the assessment of resources under the Decree of 1 April 1964.

Considering the dispute before it to amount to the question whether the pension awarded to Mrs Adlerblum by the Federal Republic of Germany was in the nature of a social assistance benefit, the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole, Paris, decided on 2 July 1975, under Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following question:

Did the Decision of 13 July 1962 of the Land of North Rhine-Westphalia which was made under Article 195 of the Federal Law of 29 June 1956 grant Mrs Adlerblum a social assistance benefit?

The decision of the Commission de Première Instance du Contentieux de la Securité Sociale, Paris, was received at the Court Registry on 2 September 1975.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged on 18 September 1975 by the Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés, the defendant in the main action, on 7 October by Mr Adlerblum, the plaintiff in the main action, and on 4 November by the Commission of the European Communities.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Written observations submitted to the Court

Mr Adlerblum, the plaintiff in the main action, considers that the benefit in question in the main action must be regarded as a social assistance benefit for the following reasons in particular:

(a) the letter and the spirit of the German law of 29 June 1956 only envisage compensation for injury to life and limb, damage to health and loss of liberty on the part of beneficiaries for whom society assumes responsibility;

(b) compensation might as easily have taken the form of a lump sum payment or temporary assistance as that of a pension; the latter cannot be treated as a profit or income resulting in some way from a transfer of property or from an investment;

(c) pensions are closely related to social security benefits for public employees, which govern any increase in the former;

(d) although, as regards the pension in question, German subjects who adopted French nationality after 1945 are the responsibility of the Federal Republic of Germany, those who were naturalized before the war may benefit in France from assistance which is undeniably social in nature.

The *Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés, Paris,* the defendant in the main action, observes that Article 3 of Decree No 64-300 of 1 April 1964, to which Article 71 of the Decree of 29 December 1945 applies for the purposes of the assessment of resources contains an exhaustive list of benefits, allowances and grants which are not to be taken into account in the assessment of resources. Accordingly, as the pension in question does not appear on this list, it must be taken into account.

The *Commission of the European Communities* observes that it is clear from its wording that the question referred to the Court of Justice refers neither to the interpretation nor to the validity of a Community measure. Even if, in order to resist a formalistic approach which would be incompatible with the nature of the procedure for preliminary rulings, the provisions of Community law for which the Court's interpretation is requested were to be sought in the decision of the Commission de Première Instance du Contentieux de la Sécurité Sociale of Paris, it must be admitted that no Community provision is referred to therein.

The only Community measures which might be involved in the main action are Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1971 (II), p. 416) and Regulation No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 (OJ, English Special Edition 1972 (1), p. 159). In the light of these provisions it must be concluded that if the pension paid to Mrs Adlerblum is in compensation for injuries suffered as a result of persecution this benefit is outside the scope of the Community Regulations, as Article 4 (4) of Regulation No 1408/71 provides that it 'shall not apply to ... benefit schemes for victims of war or its consequences ...'. If the pension in question is a social security benefit it must be taken into account in assessing the resources of the individual seeking the increase in pension, in accordance with Article 3 of the French Decree No 64-300 of 1 April 1964.

It therefore appears that what is required in this case is an interpretation of the French legislation or even a ruling on the particular case at issue. Its own case-law shows that the Court has no jurisdiction to give a ruling on such a question.

The Commission therefore considers that the following reply might be given to the question referred to the Court of Justice:

A decision on the question whether a German pension is, from the point of view of French legislation, in the nature of a social assistance benefit, is not within the jurisdiction of the Court of Justice of the European Communities in the context of the procedure provided for in Article 177 of the EEC Treaty, where the particular case at issue gives rise neither to a question of interpretation of the EEC Treaty nor to a question of the validity or interpretation of measures adopted by the Community institutions.

III — Oral procedure

The Commission, represented by its Legal Adviser, Marie-José Jonczy, presented oral argument at the hearing on 10 December 1975.

The Advocate-General delivered his opinion at the hearing on 16 December 1975.

Law

1 By decision of 2 July 1975, received at the Registry on 2 September 1975, the Commission de Première Instance du Contentieux de la Sécurité Sociale, Paris, referred to the Court under Article 177 of the EEC Treaty a question concerning the classification under French law of a decision of the authorities of the Federal Republic of Germany pursuant to the Federal Compensation Law (Bundesentschädigungsgesetz) of 29 June 1956.

2 The file shows that the plaintiff in the main action, who is in receipt of an old-age pension from the Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés, was refused an increase in pension in respect of a dependent spouse on the ground that his wife was receiving a pension from the Land of North Rhine-Westphalia under the aforementioned Law of the Federal Republic of Germany.

3 The plaintiff in the main action maintains that this pension, which is paid as compensation for injuries suffered by his wife as a result of persecution, is to be treated as a benefit granted by way of social assistance and that, as such, it should not be taken into account in the assessment of resources for the purpose of the grant of the increase in pension applied for.

4 It appears from the foregoing that since the question raised before the Commission de Première Instance du Contentieux de la Sécurité Sociale concerns the classification under French social security legislation of a benefit awarded under the German Compensation Law, it pertains to national law alone and thus does not come within the jurisdiction of the Court of Justice.

Costs

5 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

6 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Commission de Première Instance du Contentieux de la Sécurité Sociale, the decision as to costs is a matter for that tribunal.

On those grounds,

THE COURT

in answer to the question referred to it by the Commission de Première Instance du Contentieux de la Sécurité Sociale, Paris, by decision of 2 July 1975, hereby rules:

The Court has no jurisdiction to give a preliminary ruling on the question of the classification under French social security legislation of a benefit awarded under the German Compensation Law (Bundesentschädigungsgesetz).

Lecourt Kutscher Donner

Mertens de Wilmars Pescatore Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 17 December 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 16 DECEMBER 1975 [1]

Mr President,
Members of the Court,

By a decision dated 13 July 1962 the Land of North Rhine-Westphalia granted Mrs Chantal Adlerblum the right to a pension as compensation for physical injuries caused by persecution on racial grounds. This decision was based on the Federal Law of 29 June 1956.

Taking this pension into account the Commission de Recours Gracieux de la Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés refused to grant the increase in pension allowable for a dependant spouse claimed by Mr Jacob Adlerblum who was the beneficiary of an old-age pension in France. The decision was founded on the French Decree of 29 December 1945 which lays down in

1 — Translated from the Italian.