JUDGMENT OF THE COURT (Sixth Chamber)
29 September 1987 *

In Case 126/86

REFERENCE to the Court for a preliminary ruling under Article 177 of the EEC Treaty by the Fourth Chamber of the Tribunal Central de Trabajo (Central Labour Court) for a preliminary ruling in the proceedings pending before that court between

Fernando Roberto Giménez Zaera

and

Instituto Nacional de la Seguridad Social y Tesorería General de la Seguridad Social (National Social Security Institute and General Social Security Fund),

on the interpretation of Articles 2, 117 and 118 of the Treaty establishing the European Economic Community,

THE COURT (Sixth Chamber)

composed of: C. Kakouris, President of Chamber, T. Koopmans, O. Due, K. Bahlmann and G. C. Rodríguez Iglesias, Judges,

Advocate General: G. F. Mancini
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of

Fernando Giménez Zaera, the appellant in the main proceedings, by Fernando Roberto Giménez Condón, of the Saragossa Bar, in the written procedure;

the United Kingdom, by H. R. L. Purse, acting as Agent, in the written procedure;

* Language of the Case: Spanish.

the Kingdom of Spain, by Fernando Mansito Caballero, acting as Agent, in the written procedure, and by Javier Conde de Saro, acting as Agent, and Ramiro Sanchez de Lerín, Letrado del Estado, at the hearing;

the Commission of the European Communities, by Enrico Traversa and Fernando López de Rego, acting as Agents, in the written procedure, and by Gregorio Garzon, acting as Agent, at the hearing;

having regard to the Report for the Hearing and further to the hearing on 17 March 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 11 June 1987,

gives the following

Judgment

1 By an order of 21 March 1986 which was lodged at the Court on 26 May 1986, the Tribunal Central de Trabajo referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions on the interpretation of Articles 2, 117 and 118 of the EEC Treaty.

2 These questions were raised in proceedings between Fernando Roberto Giménez Zaera and the Spanish Instituto Nacional de la Seguridad Social y Tesorería General de la Seguridad Social, concerning the decision to suspend payment of the retirement pension provided for by the general social security scheme which the appellant, who is employed in the public service, received in respect of his previous employment in the private sector.

3 The decision was taken in application of Article 52 (1) of the Spanish Law of 28 December 1983 approving the State budget for 1984, which provided that the receipt of a retirement pension covered by the social security scheme was incompatible with the exercise of any remunerated function, profession or activity in any public administration.

4 The Magistratura de Trabajo (Labour Court), Saragossa, dismissed the appellant's action and he lodged an appeal against that judgment before the Tribunal Central de Trabajo, which considered that an interpretation of Articles 2, 117 and 118 of the Treaty establishing the European Economic Community was necessary to enable it to determine the dispute and decided to submit to the Court for a preliminary ruling the following questions:

'(1) Is the general objective or the task of promoting an accelerated raising of the standard of living satisfied by national legislation which reduces or impairs the quantity and quality of protection hitherto achieved in a specific aspect of the public social security scheme?

(2) Is any contribution made towards fulfilment of the aim of improving living conditions by means of upward harmonization, when such legislation is retrograde, in relation to the amount of benefit previously payable, or when it makes more stringent the conditions governing access to social security benefits which previously depended on less exacting conditions?

(3) Is the attempt to harmonize national law satisfactorily and adequately consummated with the proliferation or subsistence of such logistical solutions?

(4) Does it constitute action in favour of harmonization if a national legislative provision on social policy is systematically placed in the Budgets Law, as a device of economic policy designed to reduce public expenditure at the expense of those social security benefits whose acquisition is rendered more difficult or whose utility — quantitative or qualitative — is reduced?

(5) Is it appropriate to modify or suspend, in deference to the indeterminate concept of solidarity, the social functions which the Community legal order ascribes to the general principle of pursuing an accelerated raising of the standard of living, to the objective of improving living conditions by means of an upward harmonization and to the harmonization work undertaken by the public authorities, with the aim which those objectives share?'

5 Reference is made to the Report for the Hearing for the background to the dispute in the main proceedings, the considerations set out in the order for reference, the written observations submitted to the Court and the course of the procedure.

6 The Spanish Government proposed, primarily, that the Court should not rule on the questions submitted to it since they are not relevant to the solution of the dispute. It stated first of all that the facts of the dispute occurred prior to the date on which the Treaty, which cannot have retroactive effect, entered into force in Spain and, secondly, that the legislative measure criticized by the national court also pre-dated Spain's accession to the Community, so that it could not be assessed by reference to any standstill obligation derived from Community law.

7 In that regard, it is sufficient to refer to the consistent line of cases in which the Court has held that under the system laid down in Article 177 of the Treaty, it is for the national court to examine, in the light of the facts of the case, whether a preliminary ruling is necessary to enable it to give judgment, and it is unnecessary to examine the effects of the Community rules *ratione temporis*, an issue not raised by the Tribunal Central de Trabajo.

8 However, as regards the fourth question asked by the national court, concerning the compatibility of a particular legislative technique with the Community requirements on harmonization, it must be stated that the harmonization of national laws provided for by the Treaty is not concerned with legislative techniques and consequently a particular legislative technique such as that described in the order for reference cannot be defined by reference to Community law.

9 The other questions submitted by the national court ask essentially whether Articles 2, 117 and 118 of the Treaty prevent the introduction by national legislation of a rule which prohibits the overlapping of a retirement pension with the emoluments due to a public servant and reduces the income of the persons concerned.

10 Article 2 of the Treaty describes the task of the European Economic Community. The aims laid down in that provision are concerned with the existence and functioning of the Community; they are to be achieved through the establishment of the common market and the progressive approximation of the economic policies of

Member States, which are also aims whose implementation is the essential object of the Treaty.

11 With regard to the promotion of an accelerated raising of the standard of living, in particular, it should therefore be stated that this was one of the aims which inspired the creation of the European Economic Community and which, owing to its general terms and its systematic dependence on the establishment of the common market and progressive approximation of economic policies, cannot impose legal obligations on Member States or confer rights on individuals.

12 Articles 117 and 118 of the Treaty appear in Chapter I, containing social provisions, of Title II, concerning the social policy of the Community.

13 The first paragraph of Article 117 states that it is necessary to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained. The second paragraph states that such a development will ensue not only from the functioning of the common market, which will favour the harmonization of social systems, but also from the procedures provided for in the Treaty and from the approximation of national provisions. The Court has consistently held (in particular in its judgments of 15 June 1978 in Case 149/77 *Defrenne* v *Sabena* [1978] ECR 1365, and of 13 May 1986 in Case 170/84 *Bilka-Kaufhaus* v *Weber von Hartz* [1986] ECR 1607, at p. 1620) that that provision is essentially in the nature of a programme.

14 The fact that the objectives of social policy laid down in Article 117 are in the nature of a programme does not mean that they are deprived of any legal effect. They constitute an important aid, in particular for the interpretation of other provisions of the Treaty and of secondary Community legislation in the social field. The attainment of those objectives must nevertheless be the result of a social policy which must be defined by the competent authorities.

15 The first paragraph of Article 118 of the Treaty entrusts to the Commission 'the task of promoting close cooperation between Member States in the social field'.

The second paragraph provides that the Commission is to act in close contact with Member States by making studies, delivering opinions and arranging consultations.

16 As the Court has recently held (in its judgment of 9 July 1987 in Joined Cases 281, 283 to 285 and 287/85 *Germany and Others* v *Commission* [1987] ECR 3203), that provision does not encroach upon the Member States' powers in the social field in so far as the latter is not covered by other provisions of the Treaty, such as, for example, the free movement of workers, the common agricultural policy or the common transport policy, it nevertheless provides that those powers must be exercised in the framework of cooperation between Member States, which is to be organized by the Commission.

17 Consequently, neither the general guidelines of social policy defined by each Member State nor specific measures such as that referred to by the national court can be subject to review by the Court to determine whether they are compatible with the social objectives laid down in Article 117 of the Treaty.

18 The answer to be given to the national court must therefore be that neither Article 2 nor Articles 117 and 118 of the EEC Treaty prevent the introduction by national legislation of a rule which prohibits the overlapping of a retirement pension with the emoluments due to a public servant and reduces the income of the persons concerned.

Costs

19 The costs incurred by the Commission of the European Communities, the United Kingdom and the Kingdom of Spain, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions submitted to it by the Tribunal Central de Trabajo by order of 21 March 1986, hereby rules:

Neither Article 2 nor Articles 117 and 118 of the EEC Treaty prevent the introduction by national legislation of a rule which prohibits the overlapping of a retirement pension with the emoluments due to a public servant and reduces the income of the persons concerned.

Kakouris Koopmans

Due Bahlmann Rodríguez Iglesias

Delivered in open court in Luxembourg on 29 September 1987.

P. Heim
Registrar

C. Kakouris
President of the Sixth Chamber.