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

The promotion of an accelerated raising of the standard of living, in particular, 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.

2. 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 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.

Article 118 of the Treaty does not encroach upon the Member States' powers in the social field; 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.

Consequently, neither the general guidelines of social policy defined by each Member State nor specific measures adopted pursuant to such guidelines 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.

REPORT FOR THE HEARING
delivered in Case 125/86 *

I — Facts and procedure

The facts of the dispute in the main proceedings, as they emerge from the order for reference by the Tribunal Central de Trabajo (Central Labour Court) and from the file annexed to it, are as follows.

Since October 1983 Fernando Roberto Giménez Zaera, who is employed in the public service, has received a retirement pension covered by the general social security scheme in respect of his previous employment in the private sector.

The Law of 28 December 1983 approving the State budget for 1984 (hereinafter referred to as 'the Budgets Law') provided that the receipt of a retirement pension under the social security scheme was incompatible with the exercise of any remunerated function, profession or activity in any public administration. Article 52 (1) of that law provides as follows:

'The receipt of a retirement pension covered by the various social security schemes is incompatible with the exercise of any

* Language of the Case: Spanish.

remunerated function, profession or activity in a public administration or public institution. Consequently, the pension awarded will continue to be paid once the aforesaid incompatibility has ceased to exist.'

In application of that provision, the Spanish national social security institution decided to suspend payment of the retirement pension to Mr Giménez Zaera.

Mr Giménez Zaera brought an application challenging that decision before the Magistratura de Trabajo (Labour Court), Saragossa, claiming essentially that Article 52 of the Law of 28 December 1983 was unconstitutional. His action was dismissed by judgment of 6 September 1985.

He lodged an appeal against that judgment with the Tribunal Central de Trabajo, repeating the arguments put forward in his application to the Magistratura de Trabajo.

The Fourth Chamber of the Tribunal Central de Trabajo, considering that an interpretation of Articles 2, 117 and 118 of the Treaty establishing the European Economic Community was necessary to determine the dispute and that it was bound to request the Court for a preliminary ruling under the third paragraph of Article 177 of that Treaty, decided by order of 21 March 1986 to refer to the Court of Justice 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?'

The order of the Fourth Chamber of the Tribunal Central de Trabajo was lodged at the Court Registry on 26 March 1986.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were submitted by the following:

the Commission of the European Communities, represented by Enrico Traversa and Fernando López de Rego, members of its Legal Department, acting as Agents, on 15 September 1986;

the United Kingdom, represented by H. R. L. Purse, of the Treasury Solicitor's Department, on 19 September 1986;

Fernando Roberto Giménez Zaera, the appellant in the main proceedings, represented by Fernando Roberto Giménez Condón, of the Saragossa Bar, on 24 September 1986; and

the Kingdom of Spain, represented by Fernando Mansito Caballero, Director-General responsible for Community legal and institutional questions, acting as Agent, assisted by Ramiro Sánchez de Lerín García-Ovies, Adviser in the State Legal Department on the Court of Justice of the European Communities, Blas Oliet Palá, Chief Adviser of the Instituto Nacional de la Seguridad Social and Miguel Fuertes Suárez, Technical Adviser in the Directorate-General for Community legal and institutional questions, on 25 September 1986.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry and assigned the case to the Sixth Chamber in accordance with Article 95 (1) of the Rules of Procedure.

II — Assessment made by the national court

In the order for reference, the national court gives a detailed explanation of its own views on the significance of the rules of Community law whose interpretation is requested, as they affect the dispute in the main proceedings.

According to the Tribunal Central de Trabajo, by prohibiting the overlapping of income arising from employment in the public service with benefits payable under a retirement pension covered by the general social security scheme, Article 52 of the Budgets Law introduced a restriction which did not exist in the previous legislation and which appears incompatible with the objective of raising the standard of living referred to in Article 2 of the EEC Treaty and with the principle embodied in Article 117 of the Treaty of improving the standard of living for workers, both of which objectives are extended to the field of social security by Article 118 of the Treaty.

The national court considers that the first paragraph of Article 117 of the Treaty prohibits the Member States from reducing the degree of social protection of workers. By signing the Treaty, the Member States undertook to improve the standard of living for workers, and such improvement constitutes one of the binding objectives of social development in the Community, so that qualitative and quantitative improvements and increases in rights guaranteed by a public social security system to its beneficiaries at any time cannot be altered.

According to the national court, the harmonization of the standard of living and working conditions provided for in Article 117 must always entail progress and can

never lead to a reduction in the level of protection; the harmonization of social systems and approximation of laws must be the result of a process of improvement, not regression. National measures which in effect entail a retrograde step are therefore prohibited inasmuch as they are contrary to this upward harmonization process.

The Tribunal Central de Trabajo states that the answer to be given to the questions emerges clearly from certain principles which in its view form part of a 'Community public order' defined by its binding legal nature. Those principles include the obligation to ensure that the standard of living of workers is maintained before and after retirement, indissociable interaction between economic progress and social progress and a third principle that political economic action of any kind whatsoever is justified only if it simultaneously pursues an objective of social policy.

As regards the subject-matter of the fifth question, the national court considers that the principle of solidarity referred to in the national rules to justify what in its opinion amounts to 'a reduction in social benefits' cannot override the prohibition of any such reduction in the field of social security which results from the principles embodied in the aforesaid provisions of the Treaty.

III — Written observations

1. The Commission proposes that the first, second, third and fifth questions should be rearranged into the following single question:

'Is national legislation prohibiting the overlapping of a retirement pension with the emoluments due to a public servant compatible with Articles 2, 117 and 118 of the Treaty establishing the European Economic Community?'

The Commission proposes that that question should be answered in the negative, on the basis of the following arguments:

(a) Application by analogy of Article 222 of the EEC Treaty.

According to the Commission, the criterion adopted by the Treaty as regards the system of property ownership in the Member States enables the question asked by the national court to be answered by analogy, in the following terms: 'The Treaty of Rome shall in no way prejudice the rules in the Member States on the incompatibility of sources of income.'

(b) Express recognition, in Article 12 (2) and (3) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community, of the applicability of national rules reducing, suspending or withdrawing benefits in cases of overlapping with other social security benefits or other income.

In the Commission's view, if the Community legislature has laid down specific rules preventing the overlapping of sources of income in the case of migrant workers who, as such, should normally benefit from special protection, national rules laying down the same prohibition for public servants or non-migrant workers should *a fortiori* be presumed to be compatible with Community law.

(c) Articles 2 and 117 of the Treaty are essentially in the nature of a programme.

According to the Commission, it is clear from the very wording of these provisions that although they are provisions of positive law, their only effect is as guidelines or a programme, such as that contained in the provisions in the preamble to the Treaty, and this has been confirmed by the Court in its judgments, in particular that of 15 June 1978 in Case 149/77 *Defrenne* v *Sabena* [(1978] ECR 1365, at paragraphs 19 and 31).

(d) The content of Article 118, the first paragraph of which is in the nature of a programme and the second and third paragraphs of which impose obligations only on the Commission and hence have no direct connection with the problem raised.

As regards Question (4), on the compatibility with the Community order of the method employed by the Spanish legislature in inserting the rule prohibiting the overlapping of certain sources of income in the Budgets Law, the Commission considers that Community law is not concerned with the structural organization of the legal systems of the Member States and there is nothing in Articles 2, 117 and 118 of the EEC Treaty to imply that certain areas must be governed, at national level, by one or other category of domestic law.

2. The observations of the United Kingdom may be summarized as follows:

Articles 2, 117 and 118 of the EEC Treaty do not prohibit the Member States from reducing the level of social security benefits prevailing at the date upon which the Treaty provisions became applicable, oblige Member States to accelerate the raising of the standard of living for workers by way of domestic legislation or oblige them to 'harmonize' upwards the amounts of social security benefits available under national legislation. In the United Kingdom's opinion, it is impossible to find in the text of the EEC Treaty any rule binding the Member States of the Community as suggested by the questions asked by the national court.

The improvements and harmonization desired by the Member States are to be brought about not by virtue of any obligation imposed by Article 117 but by virtue of other Treaty provisions, and by the approximation of laws, which necessarily requires the adoption of legal measures by the Council.

The obligation imposed on the Council by Article 51 of the Treaty with regard to measures to be adopted in the field of social security in order to secure freedom of movement for workers is limited to the coordination of the social security systems of the Member States. However, nowhere in the Treaty has any power been given to the Community to determine the scope of the social security schemes of any of the Member States, or the level at which social security benefits are to be granted or maintained.

As to Article 118, the United Kingdom considers that it imposes obligations only on the Commission of the European Communities and not on the Member States.

In conclusion, the United Kindom considers that the questions referred to the Court of Justice are badly drafted and should be answered as follows:

'(1) Articles 2, 117 and 118 do not impose a general objective or task of promoting an accelerated raising of the standard of living such as prevents a Member State from introducing national legislation which reduces or impairs the quantity and quality of protection hitherto achieved in a specific aspect of its public social security scheme.

(2) Articles 2, 117 and 118 do not impose upon Member States the "aim of improving living conditions by means of upward harmonization", therefore the issue of contribution to such an aim does not arise.

(3), (4) and (5) Given the answers which the United Kingdom submits for Questions (1) and (2) above, replies to these questions become otiose.'

3. The appellant in the main proceedings considers that the primacy of Community law over Spanish domestic law results in the nullity of national provisions adopted prior to accession that are incompatible with the Community rules. That is why it is necessary to determine whether Article 52 (1) of the Budgets Law of 27 December 1983 infringes Articles 2, 117 and 118 of the EEC Treaty, and this necessitates the interpretation by the Court of Justice of undefined legal concepts such as those of an improved standard of living and the upward harmonization of social security systems.

Although the provision of the Budget Law in question purports to achieve equalization, it adversely affects subjective rights acquired in accordance with the legislation previously in force and is therefore incompatible with the objectives of the provisions of Community law in question.

4. The Kingdom of Spain stresses first of all that Articles 2, 117 and 118 of the EEC Treaty are clearly in the nature of a programme and have no direct effect, and consequently cannot apply in legal relations between individuals and States. In that regard it refers to the judgment in *Defrenne*, cited above.

Secondly, the Kingdom of Spain raises the problematic nature of the principle of non-regression and states that it is difficult, in the context of particular proceedings, to define the 'regressive' nature of a measure whose impact can be assessed only in the context of social policy as a whole. It states that the Court used similar arguments when it found in its judgment of 10 May 1960 in Joined Cases 3 to 18, 25 and 26/58 *Barbara Erzbergbau and Others* v *High Authority* [1960] ECR 173, that the mere fact that national decisions might result in a temporary reduction in employment and in the closure of some undertakings could not render those decisions illegal on grounds of infringement of Articles 2 and 3 of the ECSC Treaty, and that such measures were necessary in order to enable the common market to achieve its stated objectives since they would strengthen its resistance to crises. In any event, in the opinion of the Kingdom of Spain it is impossible to infer from Articles 2, 117 and 118 of the EEC Treaty any principle prohibiting any regression in the field of social security, and those articles do not impose on the Member States any obligations other than those arising from the specific and unambiguous obligations contained in the rules of the Treaty and other Community legislation.

Thirdly, the Kingdom of Spain states that Community law is not applicable *ratione temporis* to the facts of the main proceedings, since the contested administrative decision was adopted on 20 February 1985 and Spain did not accede to the Communities until 1 January 1986. The request for interpretation referred to the Court therefore has no bearing at all on the solution of the dispute in the main proceedings. Moreover, even if it is accepted that the articles of the Treaty whose interpretation is requested contain a directly effective principle prohibiting any regression in the field of social security, the very nature of the alleged principle, being a rule requiring the status quo to be maintained, would render it inapplicable to amendments to legislation prior to the date on which the Treaty entered into force in Spain.

The Kingdom of Spain also denies that the measure contained in Article 52 (1) of the Budgets Law is a new measure in the strict sense of the word or that it may be described as 'regressive' and contrary to the principles laid down in Articles 2 and 117 of the Treaty of Rome.

Lastly, as regards the reference made by the Spanish legislature to the principle of solidarity and the fact that the national provision whose compatibility with Community law is at issue was inserted in the law approving the State budget, the Kingdom of Spain considers that these questions are entirely extraneous to the Community system and are concerned only with the possible technical deficiences of a domestic law.

In conclusion, the Kingdom of Spain considers that, since the questions asked by the Tribunal Central de Trabajo appear to have no bearing at all on the solution of the dispute in the national proceedings, they should not be decided by the Court of Justice and, in any event, the Court must declare that the articles whose interpretation was requested are entirely in the nature of a programme or, alternatively, that the principle prohibiting any regression is inapplicable *ratione temporis*.

Should the Court nevertheless consider it appropriate to give a detailed ruling on the questions referred to it, the Kingdom of Spain proposes the following answers:

'(1) Considered in isolation, the national legislation concerned does not in itself reduce or impair the quality of protection achieved at a given time and consequently is not contrary to the general objective or task of promoting an accelerated raising of the standard of living, since the latter should be assessed in the context of all the social legislation adopted.

(2) The regressive nature of the national measures *vis-à-vis* Articles 2 and 117 of the Treaty of Rome may be assessed only by reference to general criteria and it is therefore possible — in order to achieve harmonization and social balance — to alter individual conditions and situations without thereby breaching the aim of improving living conditions by means of upward harmonization.

(3) The harmonization of national rights in the social field can be achieved only by means of specific instruments provided for in the Treaty of Rome.

(4) The inclusion of a specific measure in budgetary legislation does not affect any harmonization which will in any event be determined by the specific content of the measure and not by the legislative technique employed.

(5) With reference to the answer given to the first question, it should be pointed out that the national legislation considered in isolation does not necessarily amend or render ineffective the social functions ascribed by the Community legal order 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, and it may even be based on the concept of solidarity without breaching such principles.'

G. C. Rodríguez Iglesias
Judge-Rapporteur