JUDGMENT OF THE COURT
10 NOVEMBER 1971[1]

Eugen Höhn
v Caisse Régionale d'Assurance Vieillesse des Travailleurs Salariés de Strasbourg
(Reference for a preliminary ruling by the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole du Bas-Rhin)

'Old-Age Pension'

Case 28/71

Summary

1. *Social security for migrant workers — Old-age pensions — National legislation — Different kinds of benefit — Entitlement to benefit of a more advantageous kind — Aggregation of insurance periods completed in several Member States*
(Regulation No 3 of the Council, Article 27)

2. *Social security for migrant workers — Old-age pensions — Aggregation of insurance periods completed in several Member States* — Pro rata *calculation — Account to be taken of periods in fact completed*
(Regulation No 3 of the Council, Article 28)

1. Where the legislation of a Member State provides for old-age benefits of different kinds, depending on the length of time for which the worker concerned has been affiliated, insurance periods completed successively or alternatively in two or more Member States must be aggregated wherever the worker has not completed the number of periods necessary under the legislation of the first State to entitle him to benefit of the more advantageous kind.
2. Where aggregation is necessary, for the purpose of calculating the fraction of the benefit to be borne by the relevant institution, account must be taken of the periods in fact completed by the worker concerned, and not merely those representing the total required in the State in question for entitlement to full benefit.

In Case 28/71

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 du Bas-Rhin sitting in Strasbourg, for a preliminary ruling in the action pending before that court between

1 — Language of the Case: French.

EUGEN HÖHN, residing at Sulz am Neckar (Federal Republic of Germany),

and

CAISSE RÉGIONALE D'ASSURANCE VIEILLESSE DES TRAVAILLEURS SALARIÉS DE STRASBOURG,

on the interpretation of Articles 27 and 28 of Regulation No 3 of the Council concerning social security for migrant workers,

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher, Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Monaco and P. Pescatore (Rapporteur), Judges,

Advocate-General: A. Dutheillet de Lamothe
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

Text similar to that of the judgment delivered on 10 November in Case 26/71, with the exception of the dates and figures (*see p. 871*)

Grounds of judgment

Text identical to that of the judgment delivered on 10 November 1971 in Case 26/71 (*see p. 875*)

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 51 and 177;
Having regard to Regulation No 3 of the Council concerning social security for migrant workers, especially Articles 27 and 28;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question referred to it by the Commission de Première Instance de Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole du Bas-Rhin by decision of 28 April 1971, hereby rules:

(1) **Where the legislation of a Member State provides for old-age benefits of different kinds, depending on the length of time for which the worker concerned has been affiliated, insurance periods completed successively or alternatively under the legislation of two or more Member States must be aggregated wherever the worker has not completed the number of periods necessary under the legislation of the first State to entitle him to benefit of the more advantageous kind.**

(2) **Where aggregation is necessary, for the purpose of calculating the fraction of the benefit to be borne by the relevant institution account must be taken of the periods in fact completed by the worker concerned and not merely those representing the total required in the State in question for entitlement to full benefit.**

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 10 November 1971.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE

(see Case 26/71, p. 878)