JUDGMENT OF THE COURT (SECOND CHAMBER)
17 DECEMBER 1981 [1]

Regina
v Social Security Commissioner, ex parte Norman Ivor Browning
(reference for a preliminary ruling from the High Court of Justice, Queen's Bench Division, Divisional Court, London)

(Retirement pensions and death benefit — "Minimum benefit")

Case 22/81

Social security for migrant workers — Old-age and death insurance — Pension supplement — Guarantee of minimum income — Minimum benefit — Concept (Regulation No 1408/71 of the Council, Art. 50)

Article 50 of Regulation No 1408/71 is to be interpreted as meaning that a "minimum benefit" exists only where the legislation of the State of residence includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions.

In Case 22/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice, Queen's Bench Division, Divisional Court, London, for a preliminary ruling in the action pending before that court between

1 — Language of the Case: English.

REGINA

and

THE SOCIAL SECURITY COMMISSIONER (formerly the National Insurance Commissioner), *ex parte* NORMAN IVOR BROWNING,

on the interpretation of Article 50 of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and A. Chloros, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

Robert Stanley, an Irish national, contributed as an employed person to the

Irish social security scheme from September 1935 to 25 January 1955 and after that date to the United Kingdom social security scheme.

On 8 May 1973 Mr Stanley reached the age of 65. Being resident in the United Kingdom, he submitted in due time an application for an old-age pension to the Department of Health and Social Security.

By decision of 27 March 1973 the competent Insurance Officer awarded Mr Stanley from 31 May 1973 a retirement pension calculated by reference to the periods of insurance he had completed in the United Kingdom in accordance with the provisions of Article 46 (1) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416; codified version: Official Journal 1980, C 138, p. 1). Mr Stanley was also entitled to a retirement pension from the Irish social security institutions, calculated on a *pro-rata* basis in accordance with Article 46 (2) of Regulation No 1408/71.

The Insurance Officer awarded Mr Stanley in addition a supplement under Article 50 of Regulation No 1408/71 which, as amended by the Act concerning the Conditions of Accession and the Adjustments to the Treaties (Official Journal, English Special Edition of 27 March 1972, p. 14) and the Council Decision of 1 January 1973 adjusting the documents concerning the accession of the new Member States to the European Communities (Official Journal 1973, L 2, p. 1), provides as follows:

"A recipient of benefits to whom this Chapter applies may not, in the States in whose territory he resides and under whose legislation a benefit is payable to him, be awarded a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods of insurance taken into account for the payment in accordance with the provisions of the preceding articles. The competent institution of that State shall, if necessary, pay him throughout the period of his residence in its territory a supplement equal to the difference between the total of the benefits payable under this Chapter and the amount of the minimum benefit."

The amount of the supplement granted to Mr Stanley represented the difference between, on the one hand, the theoretical amount of the pension which he could have claimed pursuant to Article 46 (2) (a) of Regulation No 1408/71 if all the periods of insurance completed by him in Ireland and in the United Kingdom had been completed in the United Kingdom alone, and, on the other hand, the total amount of pensions granted him by the United Kingdom and Ireland.

On 27 January 1977 the Insurance Officer revised the amount of the retirement pension he had previously granted to Mr Stanley, with effect from 6 January 1977; in particular he decided that payment to Mr Stanley of the supplement under Article 50 of Regulation No 1408/71 must cease.

On the rejection of Mr Stanley's complaint to the local tribunal in Worthing, he appealed to the National Insurance Commissioner. The latter, in a decision of 13 September 1979, upheld the Insurance Officer's original decision

granting Mr Stanley the supplement provided for under Article 50 of Regulation No 1408/71.

The Insurance Officer appealed against that decision on 19 December 1979 to the Divisional Court, Queen's Bench Division, of the High Court of Justice. In his appeal he requested the annulment of the Commissioner's decision on the ground that the concept of a "minimum benefit" was unknown in United Kingdom legislation and that, consequently, there was no supplement payable under Article 50 of Regulation No 1408/71.

By an order of 18 December 1980 the Divisional Court of the High Court of Justice, Queen's Bench Division, decided pursuant to Article 177 of the EEC Treaty to suspend the proceedings pending a preliminary ruling from the Court of Justice on the following questions:

"1. Is there a minimum benefit within the meaning of Article 50 of Council Regulation (EEC) No 1408/71 where the legislation of a Member State makes entitlement to retirement benefit at a flat rate conditional on the yearly average of weekly flat-rate contributions paid or credited to a claimant during the period between his entry into insurance and his attaining pensionable age being not less than 50, and, if that condition is not satisfied but the yearly average is not less than 13, provides for a reduced amount of retirement benefit determined solely by reference to the claimant's contribution average for that period?

2. If the answer to Question 1 is in the affirmative is the 'minimum benefit':

   (a) the smallest amount of benefit that may be paid to an insured person under the legislation of that State, that is to say, for a contribution average of 13;

   (b) the amount that would be payable to the claimant under the legislation of that State taking account of all the insurance periods completed under the legislations of all Member States to which he had been subject; or

   (c) some other (and if so what) amount?"

The order made by the High Court of Justice was lodged at the Court Registry on 5 February 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 27 March 1981 by the Commission of the European Communities, represented by John Forman, a member of its Legal Department; on 24 April by the Insurance Officer, Norman Ivor Browning, the appellant in the main action, represented by David N. R. Latham, Barrister, of the Middle Temple, instructed by Anne Brenda Farthing, Senior Legal Assistant at the Department of Health and Social Security; and on the same date, 24 April 1981, by Robert Stanley, the respondent in the main action, represented by Richard J. B. Drabble, Barrister, of the Inner Temple, instructed by W. J. Brazier & Forsyth, Solicitors.

On 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. However, it asked the Commission to explain in writing

what were the "minimum benefits" within the meaning of Article 50 of Regulation No 1408/71 laid down by the legislation of some Member States; the request was complied with within the time allowed.

By an order dated 1 July 1981 the Court decided to assign the case to the Second Chamber pursuant to Article 95 (1) and (2) of the Rules of Procedure.

II — Written observations submitted to the Court

The *Insurance Officer, Norman Ivor Browning,* the appellant in the main action, considers that the reply to the first question raised by the High Court of Justice should be in the negative and that it is therefore not necessary to reply to the second.

(a) In 1973 entitlement to payment of a retirement pension depended on Article 30 of the National Insurance Act 1965 and the regulations made thereunder. It was subject to the condition that the person entitled had paid not less than 156 flat-rate contributions, payable weekly, for the period between that person's entry into the insurance scheme and the date on which he reached the age of retirement, the yearly average of the contributions paid by him or credited to him being not less than 50. Any insured person who failed to meet both of the contribution conditions was not entitled in principle to any retirement pension at all; however, provision was made in the National Insurance (Widows' Benefit and Retirement Pensions) Regulations 1972 for a reduced pension to be payable to insured persons who had paid more than 156 contributions but whose yearly average of paid or credited contributions was 13 or more, but less than 50.

In addition to that "flat-rate" pension the Act provided for an enhanced pension, the "graduated benefit", which was a rudimentary earnings-related scheme.

There was no provision in the British legislation for minimum pension. The level of flat-rate benefit was entirely dependent upon the relation between the number of contributions paid and the length of insurance; in particular, there was no provision for any minimum benefit based on length of residence, time in insurance, or any given number of contributions.

(b) The view that a beneficiary residing in the United Kingdom is entitled by virtue of Article 50 of Regulation No 1408/71 to a supplement to secure payment to him of benefit calculated according to Article 46 (2) (a) of the regulation is based on a misconstruction of the concept of "minimum benefit": it takes "minimum benefit" within the meaning of Article 50 to be equivalent to the "theoretical amount of benefit" referred to in Article 46 (2) (a). However, that interpretation corresponds neither to the wording of Article 50 nor to its objective and was rejected by the Court in its judgment of 30 November 1977 (Case 64/77 *Torri* [1977] ECR 2299).

Article 50 of Regulation No 1408/71 is limited in scope: it is to be applied only by the institutions of such Member States as lay down a minimum for the relevant benefits; the supplement is intended to ensure that in those Member States which recognize such a minimum benefit, the migrant worker should

receive at least that minimum pension, subject to certain conditions concerning the length of the insurance period or the duration of the residence.

There is no significant distinction between the main case and *Torri,* where the Court held that Article 50 applied only when the legislation of the Member State in whose territory the worker resided made provision for a minimum pension. The United Kingdom legislation has established a pension the amount of which is calculated by a comparison between the working life of the worker and the number of contributions he has made during that period; there is no provision for a level of pension which is to be paid irrespective of the number and average amount of the contributions paid, the length of the insured period and the duration of the residence. The position varies from claimant to claimant depending on his individual insurance history, as in the *Torri* case. It is out of the question for the "minimum benefit" to vary from nil to the maximum flat-rate benefit payable for a contribution average of 50.

(c) Further, Regulation No 1408/71 requires the declarations of Member States specifying the minimum benefits referred to in Article 50 to be notified and published in accordance with Article 96. Such a declaration presupposes the existence of a readily identifiable level of benefit, the "minimum benefit", and is not apt if Article 50 is intended to secure the payment of a benefit which is dependent upon an assessment of the average of the contributions paid by the person concerned, his remuneration or other such variable factors. The concept of "minimum benefit" is to be identified by reference to domestic law; if it were a benefit to be determined by the application of the "theoretical amount of benefit" under Article 46 (2) (a) of the regulation it could not be a "minimum benefit" capable of being notified pursuant to Articles 5 and 96.

It is contended that a "minimum benefit" within the meaning of Article 50 can only exist where the legislation of the Member State provides clearly for such a "minimum" and where the conditions for payment of such a minimum, if any, are dependent solely upon periods of residence or insurance. That is the case for those Member States (France, Italy and Luxembourg) whose legislation provided at that time for a "minimum" of the kind to which Article 50 was intended to apply and which made declarations pursuant to Article 5 of the regulation.

The result of the amendment to the revised declaration by the United Kingdom provided for in Article 5 of Regulation No 1408/71 (Official Journal 1977, C 89, p. 2) is that there is no provision under British legislation for a minimum benefit within the meaning of Article 50.

Robert Stanley, the respondent in the main action, submits that the concept of "minimum benefit" within the meaning of Article 50 of Regulation No 1408/71 refers to the smallest amount that would be payable under the relevant legislation,

if there is such a smallest amount, for the aggregate period; there is a "minimum benefit" if the legislation of a Member State is such that it is possible to state with precision the minimum amount of benefit payable by considering the duration of the relevant insurance period alone and without reference to matters personal to the claimant such as the amount of his earnings. The basic purpose of the British flat-rate system is to ensure that a claimant who has been insured all his working life is entitled to a flat-rate pension the amount of which does not vary according to his earnings; such a pension is the minimum pension fixed by the British legislation in respect of a worker who has been employed within the Community for all his working life.

(a) As to the manner in which Regulation No 1408/71 is to be applied to the British flat-rate system it must be remembered that the British authorities are bound to take into account the fact that flat-rate contributions have been paid throughout the periods of insurance completed in Member States other than the United Kingdom; the difficulties encountered in the main action stem principally from a failure to grasp the fact that consideration of the number of flat-rate contributions paid amounts to consideration of the duration of a completed insurance period.

(b) Accordingly, Article 50 of Regulation No 1408/71 must be understood to mean that it assumes that flat-rate contributions have been paid throughout the periods taken into account in calculating the payment in accordance with the provisions of the preceding articles. The British legislation, it is submitted, fixes a minimum benefit for an insurance period of specified length once it is assumed that flat-rate contributions have been paid throughout that insurance period; it is not necessary to consider in addition matters personal to the claimant.

(c) There is nothing in the *Torri* decision of the Court to contradict the clear wording of Article 50 of Regulation No 1408/71 to the effect that there is a minimum pension when the amount of the pension payable may be ascertained by reference solely to the duration of the insurance periods.

(d) If Article 50 of Regulation No 1408/71 is to be interpreted on the basis of the social aims pursued by the legislation of other Member States, namely to guarantee a minimum level of income, it must be observed that the flat-rate pension payable under the British legislation has all the essential characteristics of a minimum pension in the broad sense of the term. If the British system before 1975 had provided for both a minimum pension of a flat-rate kind payable once a claimant had been insured all his working life and an earnings-related element, there would be no difficulty in characterizing the pension as a minimum pension within the meaning of Article 50; the differences between the British position prior to 1975 and the hypothetical position in which there was no earnings-related element and entitlement to the flat-rate pension depended upon an annual average of the flat-rate contributions

paid or credited, are not fundamental ones.

(e) Mr Stanley submits that, despite the change in terminology, it is the clear intention of the new British pensions scheme set out under the Social Security Act and the Social Security Pensions Act 1975 that every pensioner who has been insured in the United Kingdom all his working life should qualify for the "basic component" of a pension; further, the question whether a claimant qualifies for the flat-rate basic pension component may be determined by reference solely to the duration of the completed insurance periods, just as can the question of determining the amount of the basic pension component which is payable when the claimant has insufficient "qualifying years" to be eligible for the full flat-rate amount. On the other hand, the amount of the "additional pension component" may be ascertained only by reference to the actual earnings received by the claimant. It is submitted accordingly that there is no difficulty in identifying the basic pension component as the "minimum pension" within the meaning of Article 50 of Regulation No 1408/71 and that it would be anomalous to hold that there was no "minimum pension" before 1975 simply because the flat-rate pension was all that was provided for, without any additional component.

The *Commission* submits that the question raised before the Court is whether, for the purposes of applying Article 50 of Regulation No 1408/71, a "minimum benefit" exists under British social security legislation and, if so, how it is to be calculated.

(a) The most recent declaration made by the United Kingdom pursuant to Article 5 of Regulation No 1408/71 for the purposes of Article 50 has the word "none" under the heading "Minimum benefits referred to in Article 50 of the regulation" (Official Journal 1977, C 89, p. 2). The declaration is identical with those made by four other Member States (Denmark, Ireland, Federal Republic of Germany and The Netherlands) whilst the declarations made by Belgium, France, Italy and Luxembourg contained more or less detailed references to national legislation (Official Journal 1980, C 139, p. 1); the same applies in respect of Greece (Official Journal 1981, C 143, p. 1).

(b) It was laid down in the *Torri* case that Article 50 of Regulation No 1408/71 is applicable only in cases in which provision is made in the legislation of a Member State in whose territory the worker resides for a minimum pension; it was further stated in the judgment that Article 50 covers cases where the periods of employment of the worker under the legislation of the States to which he was subject were relatively short with the result that the total amount of the benefits payable by those States does not provide a reasonable standard of living, and that in order to remedy that situation Article 50 provides that where the legislation of the State of residence lays down a minimum benefit, the benefit payable by that State shall be increased. The Court also referred to the "limited object" of Article 50.

(c) According to its introductory heading Article 50 is concerned with the award of a supplementary payment where, even after the benefits payable by

the different Member States involved have been added together, the minimum amount laid down by the legislation of a particular Member State is not attained. The "minimum benefit" is defined in the first sentence of Article 50: it is to be at least equal to that "fixed" by the legislation of a particular Member State in respect of "a period of insurance or residence equal to all the periods taken into account for the payment in accordance with the provisions of the preceding articles", which means, in the case at hand, the periods completed in Ireland and the United Kingdom; in other words, the basis for any payment of a supplement is the amount, that is to say, the minimum amount, established by the legislation of one Member State which would be payable provided that a given period of insurance or residence had been completed.

(d) In the context of the declarations by the new Member States to be made under Article 5 of Regulation No 1408/71, the United Kingdom stated in relation to the minimum benefits referred to in Article 50 of the regulation (Official Journal 1973, C 43, p. 7) that "... The rates of flat-rate old-age pension and survivors' benefits depend upon the yearly average of contributions paid or credited throughout the insurance life and these rates are laid down in regulations made" under, in particular, the National Insurance Act 1965 of 5 August 1965. This statement was interpreted at the time by the British authorities to mean that if the total amount was less than the amount which would have been payable had all the periods of insurance been completed in the Member State of the Community in which the person was permanently resident, that country would pay him a supplement equal to the difference between the two amounts.

(e) However, the declaration was modified in 1977 (Official Journal, C 89, p. 2) and replaced by the word "none".

In that regard the following points must be taken into consideration.

According to Article 5 of Regulation No 1408/71, which is headed "Declarations of Member States on the scope of this regulation", it is for the Member States to specify the minimum benefits, if they exist, referred to in Article 50; these declarations are to be not only notified in accordance with Article 96 but also published in the Official Journal. The United Kingdom declaration clearly states: "None".

In no case does Article 50 permit advantage to be taken of a national social security system to establish a minimum pension and hence award an increased benefit as if the various periods had all been completed in the relevant Member State. Article 50 is concerned with the payment of the minimum benefit, which depends on the period of insurance or residence, where this is fixed by the legislation of that Member State and where it would not be payable even taking into account the periods completed in the Member State (or States) other than the Member State of residence.

A study of the declarations made by the other Member States is sufficient to show that the minimum benefits to which reference is made in Article 50 are

designed to ensure, at national level, a certain minimum standard of living. Logically, Article 50 must be intended to enable a worker to obtain, at all events, the minimum benefit laid down in a particular Member State, provided that there is one, for a particular period of insurance or residence.

(f) The reply to be given to the questions which have been raised should be as follows:

As the Court has already held in its judgment in Case 64/77 *Torri*, Article 50 of Regulation No 1408/71 is applicable only in cases in which provision for a minimum pension is made in the legislation of the Member State in whose territory the worker resides.

III — Oral procedure

The Insurance Officer, Norman Ivor Browning, the appellant in the main action, represented by Mr Latham; Robert Stanley, the respondent in the main action, represented by Louis Blom Cooper, QC, of the Middle Temple; and the Commission, represented by John Forman, presented oral argument and their replies to the questions put to them by the Court at the sitting on 15 October 1981.

The Advocate General delivered his opinion at the sitting on 19 November 1981.

Decision

1 By an order of 18 December 1980 which was received at the Court on 5 February 1981 the High Court of Justice, Queen's Bench Division, Divisional Court, London, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Article 50 of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons (Official Journal, English Special Edition 1971 (II), p. 416; codified version: Official Journal 1980, C 138, p. 1), with particular reference to the meaning of the expression "minimum benefit".

2 From the file on the case it appears that the respondent in the appeal before the High Court of Justice, Robert Stanley, an Irish national living in the United Kingdom, completed periods of insurance first in his country of origin and later in the United Kingdom. On reaching pensionable age in 1973 he was awarded, by a decision of the Insurance Officer of 27 March 1973, a retirement pension calculated in accordance with the provisions of Article 46 (1) of Regulation No 1408/71. In addition to the pension the Insurance Officer awarded him a supplement pursuant to Article 50 of the

same regulation, according to which a recipient of benefits may in certain circumstances be entitled to receive a supplement to his pension equal to the "difference" between the total of the benefits payable under the regulation and the amount of the "minimum benefit".

3 The Insurance Officer considered that the "minimum benefit" was the benefit payable under the United Kingdom legislation, and the "difference" referred to in Article 50 was the difference between that benefit and the pension which would have been payable had all the periods of insurance been completed in the United Kingdom. He therefore awarded Mr Stanley a pension equal to the "theoretical amount" defined in Article 46 (2) (a) of the regulation. The decision was based on the fact that at the time in question the United Kingdom Government had made a declaration pursuant to Articles 5 and 50 of Regulation No 1408/71 that certain benefits payable under, in particular, the National Insurance Act 1965 as subsequently amended were the "minimum benefits referred to in Article 50 of the regulation" (Official Journal 1973, C 43, p. 7, Section II).

4 That declaration, which was brought up to date in 1975 (Official Journal, C 245, p. 2, Section II), was subsequently replaced by a declaration published in the Official Journal of 14 April 1977, C 89, p. 2, worded as follows: "Minimum benefits referred to in Article 50 of the regulation: *None*". It was shortly before that declaration was published, on 27 January 1977, that the Insurance Officer adopted a decision altering his earlier decision and withdrawing from Mr Stanley with effect from 6 January 1977 the extra payment he had previously been awarded under Article 50 of the regulation.

5 Mr Stanley's appeal against that decision to the local tribunal with jurisdiction in such matters was dismissed. He then appealed to the National Insurance Commissioner (now the Social Security Commissioner) who, on 13 September 1979, ruled that the Insurance Officer's original decision must stand, there being no grounds for amending it.

6 From the statement of the reasons on which the decision was based it is apparent that the National Insurance Commissioner considered that "minimum benefit" within the meaning of Article 50 of Regulation No 1408/71 must be understood to mean the lowest amount payable under

the law of the United Kingdom for all the periods of insurance which are to be taken into account. The flat-rate pension calculated on the basis of such periods of insurance constitutes, according to the Commissioner, the minimum pension determined by United Kingdom legislation. The fact that the amount coincides with the "theoretical amount" referred to in Article 46 (2) (a) of the regulation is, in the Commissioner's view, a mere coincidence. In his opinion that interpretation is in accordance with Article 50 of the regulation and is not affected by the decision in the judgment of the Court of 30 November 1977 (Case 64/77 *Torri* [1977] ECR 2299), on which the Insurance Officer relied in the proceedings before him.

7 The Insurance Officer appealed against that decision to the Divisional Court, Queen's Bench Division, of the High Court of Justice. Contrary to the opinion of the National Insurance Commissioner his view, based on the declaration made by the United Kingdom Government in 1977, is that the "minimum benefit" referred to in Article 50 of the regulation is in fact unknown to United Kingdom legislation.

8 In order to obtain clarification of this concept the High Court of Justice referred to the Court two questions worded as follows:

"1. Is there a minimum benefit within the meaning of Article 50 of Council Regulation (EEC) No 1408/71 where the legislation of a Member State makes entitlement to retirement benefit at a flat rate conditional on the yearly average of weekly flat-rate contributions paid or credited to a claimant during the period between his entry into insurance and his attaining pensionable age being not less than 50, and, if that condition is not satisfied but the yearly average is not less than 13, provides for a reduced amount of retirement benefit determined solely by reference to the claimant's contribution average for that period?

2. If the answer to Question 1 is in the affirmative is the 'minimum benefit':

(a) the smallest amount of benefit that may be paid to an insured person under the legislation of that State, that is to say, for a contribution average of 13;

(b) the amount that would be payable to the claimant under the legislation of that State taking account of all the insurance periods

completed under the legislations of all Member States to which he had been subject; or

(c) some other (and if so what) amount?"

9 With a view to giving a reply to those questions the heading and wording of Article 50 of Regulation No 1408/71 must first be recalled:

"Award of a supplement when the total of benefits payable under the legislations of the various Member States does not amount to the minimum laid down by the legislation of the State in whose territory the recipient resides.

A recipient of benefits to whom this chapter applies may not, in the State in whose territory he resides and under whose legislation a benefit is payable to him, be awarded a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods of insurance taken into account for the payment in accordance with the provisions of the preceding articles. The competent institution of that State shall, if necessary, pay him throughout the period of his residence in its territory a supplement equal to the difference between the total of the benefits payable under this chapter and the amount of the minimum benefit."

10 The wording of that provision makes it clear that the "minimum benefit" to which the article refers is to be defined primarily not on the basis of the concepts employed in the regulation itself but by reference to the minimum benefits fixed by the laws of the various Member States. An examination of the declarations which have been made in that context by the Member States pursuant to Article 5 of the regulation reveals that "minimum benefits", within the meaning of Article 50, are provided for by the law of only some of the Member States. Since the question of the existence of such benefits under United Kingdom legislation is in dispute it would appear appropriate to examine the nature of such benefits in those national legal systems in which their existence is not contested.

11 According to the information contained in the case-file and that furnished by the Commission in the course of the proceedings the relevant provisions in

the Member States which have "minimum benefits" within the meaning of Article 50 are designed, in various forms, to guarantee to recipients of retirement pensions a minimum income in excess of the amount to which they would normally be entitled on the basis of the periods of insurance completed by them and the contributions which they have paid. The purpose of such provisions is, in general, to provide the recipients with a guaranteed minimum income.

12 That was the objective in view of which the Court made reference in its decision of 30 November 1977, cited above, where in paragraph 5 it is stated that "Article 50 covers cases where the periods of employment of the worker under the legislation of the State to which he was subject were relatively short with the result that the total amount of the benefits payable by those States does not provide a reasonable standard of living".

13 That view may be deduced from the actual wording of Article 50, where reference is made in the heading and in the body of the article to the award of a "supplement", meaning an additional payment in excess of the minimum payable in application of the normal rules under a particular national legal system. That view may likewise be deduced from the second sentence of Article 50, which states that a recipient of benefits to whom the regulation applies is entitled to payment of the "difference" between the total of the benefits payable under the regulation, that is to say, the sum resulting from the normal application of the rules concerning aggregation and apportionment laid down in Article 46, and the minimum benefit which is guaranteed by the law of the State of residence. Such a method of calculation implies that what is meant is a minimum resulting from a specific guarantee laid down under national legislation and not the minimum benefits which may result from the normal operation of the rules concerning the determination of rights to retirement pension on the basis of the insurance periods which have been completed and the contributions which have been paid.

14 Those considerations make it clear that the minimum benefits referred to in Article 50 are distinct from the "theoretical amount" referred to in Article 46 (2) (a), which does not represent a sum the actual payment of which is guaranteed, but forms the basis of calculation used in applying the rules concerning aggregation and apportionment.

15 The reply to the question which has been raised must therefore be that Article 50 of Regulation No 1408/71 is to be interpreted as meaning that a "minimum benefit" exists only where the legislation of the State of residence includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions.

16 In view of the foregoing the second question raised by the national court has no purpose.

Costs

17 The costs incurred by the Commission of the European Communities which has submitted observations to the Court are not recoverable. As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division, Divisional Court, by order of 18 December 1980, hereby rules:

Article 50 of Regulation No 1408/71 is to be interpreted as meaning that a "minimum benefit" exists only where the legislation of the State of residence includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in

excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions.

Due Pescatore Chloros

Delivered in open court in Luxembourg on 17 December 1981.

A. Van Houtte
Registrar

O. Due
President of the Second Chamber

OPINION OF THE ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 19 NOVEMBER 1981

My Lords,

Mr Robert Stanley is an Irish national resident in the United Kingdom. He was born on 8 May 1908 and from September 1935 to January 1955, he was employed in Ireland and covered by the national insurance scheme for employed persons then in force. He then went to the United Kingdom and worked there for a further period of about seventeen years subject to the relevant national insurance provisions. On 8 May 1973 he reached pensionable age and claimed a retirement pension from the Department of Health and Social Security, the competent institution in the United Kingdom. The Insurance Officer calculated his entitlement to a pension by applying Article 46 of Regulation No 1408/71 (OJ L 149/2 of 5 July 1971) and awarded the amount due under Article 46 (1) because it was higher than that calculated under Article 46 (2). Mr Stanley was also awarded a graduated retirement benefit under Section 36 of the National Insurance Act 1965 and a pension supplement equal to the difference between the total amount of the pensions to which he was entitled under English and Irish law and the flat-rate pension which would have been paid under the former had all his periods of insurance been completed in the United