

SUMMARY

ECJ 7 March 2013, case C-127/11 (Aldegonda van den Booren - v - Rijksdienst voor Pensioenen), Free movement, Social insurance

Facts

Ms Van den Booren was a Dutch widow living in The Netherlands. Her late husband had worked in Belgium from 1951 to 1961, during which time he was insured under Belgian social security legislation. He died in 1982. In 1985, when Ms Van den Booren turned 65, she became eligible for two social security benefits: a Belgian survivor's pension and a Dutch old-age pension. In 2002 her Dutch old-age pension increased by € 42 per month, as a result of a change in Dutch law. Previously, Dutch law contained a discriminatory provision that affected old-age pensioners such as Ms Van den Booren. This provision was removed.

The Belgian social security authority (the NPO), reduced Ms Van den Booren's invalidity pension on account of the increase in her Dutch old-age pension. Although this reduction was in line with Regulation 1408/71 on social security coordination (now Regulation 883/2004), Ms Van den Booren challenged it because, if her two pensions had been governed by the laws of one Member State, the increase in her invalidity pension through the removal of a discriminatory provision of law would not have led to a reduction in her old-age pension.

National proceedings

Ms Van den Booren brought legal proceedings against the NPO before a Belgian court, seeking to reverse the decision reducing her Belgian pension. The court of first instance dismissed her claim, but on appeal the higher court referred two questions to the ECJ. In essence, it asked whether Regulation 1408/71 precludes a Member State's law from reducing a survivor's pension on the ground that the survivor's old-age pension in another Member State has

increased and, if not, whether primary EU law prevents the application of the relevant provision of national law.

ECJ's findings

1. The Belgian rule reducing Ms Van den Booren's survivor's pension is in compliance with Regulation 1408/71. However, that does not prevent it from falling within the scope of primary EU law (§ 28-38).
2. Article 45 TFEU on the freedom of movement of persons militates against a national measure which is capable of hindering or rendering less attractive the exercise by EU nationals of their right to free movement. Such measures are only allowed if they pursue a legitimate aim in the public interest, are appropriate to ensuring the attainment of that objective, and do not go beyond what is necessary to attain it (§ 44-45).
3. Accordingly, it is for the national court to assess the compatibility of the Belgian rules at issue with EU law by determining whether those rules, although applying without distinction to Belgians and others, lead to an unfavourable situation in comparison with that of a person whose situation has no cross-border element and, if such a disadvantage is established, whether the national rule at issue is justified (§ 46).

Ruling

1. Regulation 1408/71 must be interpreted as not precluding the application of a national provision under which a survivor's pension is reduced as a result of an increase in an old-age pension received under the legislation of another Member State.
2. Article 45 TFEU likewise does not preclude the application of such national rules insofar as they do not lead, in respect of the person concerned, to an unfavourable situation in comparison with that of a person whose situation has no cross-border element, or, if such a disadvantage is established, insofar as it is justified by objective considerations and is proportionate in relation to an objective legitimately pursued by national law, this being a matter for the referring court to ascertain.

Creator: European Court of Justice (ECJ)

Verdict at: 2013-03-07

Case number: C-127/11