

SUMMARY

## **ECJ 15 March 2018, case C-431/16 (Blanco Marquís), Social insurance**

***&lt;p&gt;Instituto Nacional de la Seguridad Social (INSS) &amp;&mp; Tesorer&iacute;a General de la Seguridad Social (TGSS) &ndash; v &ndash; Jos&eacute; Blanco Marqu&eacute;s, Spanish case&lt;/p&gt;***

### **Questions to the ECJ**

Does the Spanish rule in Article 6(4) of Decree 1646/1972, as interpreted by the Tribunal Supremo (Supreme Court), pursuant to which the 20% supplement is suspended during the period in which the worker is in employment or receives a retirement pension, constitute a provision on reduction of benefit for the purposes of Article 12 of Regulation No 1408/71?

Must Article 46a(3)(a) of Regulation No 1408/71 be interpreted as meaning that the concept of 'legislation of the first Member State' in that article is to be interpreted strictly, or whether it also includes the interpretation of that concept by a higher national court?

Must the 20% supplement granted to a worker drawing a total permanent incapacity pension under Spanish law and the retirement pension acquired by that same worker in Switzerland be regarded as being of the same kind or of a different kind within the meaning of Regulation No 1408/71.

In the event that the two benefits in question must be regarded as being of the same kind, which specific provisions of Regulation No 1408/71 as regards overlapping of benefits of the same kind are to be applied?

### **Ruling**

A national rule, such as that at issue in the main proceedings, pursuant to which the supplement to a total permanent incapacity pension is suspended during the period in which the beneficiary of that pension receives a retirement pension in another Member State or in Switzerland, constitutes a provision on reduction of benefit for the purposes of Article 12(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EEC) No 592/2008 of the European Parliament and of the Council of 17 June 2008.

Article 46a(3)(a) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008, must be interpreted as meaning that the concept of 'legislation of the first Member State' in that article is to be interpreted as including the interpretation of a provision of national law made by a supreme national court.

A supplement to a total permanent incapacity pension granted to a worker under the law of a Member State, such as that at issue in the main proceedings, and a retirement pension acquired by that same worker in Switzerland must be regarded as being of the same kind within the meaning of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008.

Article 46b(2)(a) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008, must be interpreted as meaning that a national rule to prevent overlapping, such as that in Article 6 of *Decreto 1646/1972 para la aplicación de la ley 24/1972, de 21 de junio, en materia de prestaciones del Régimen General de la Seguridad Social* (Decree 1646/1972 on the Implementation of Law 24/1972 of 21 June 1972 concerning general social security system benefits), of 23 June 1972, is not applicable to a benefit calculated in accordance with Article 46(1)(a)(i) of that regulation when that benefit is not referred to in Annex IV, part D, to that regulation.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2018-03-15

**Case number:** C-431/16 (Blanco Marqués)