

SUMMARY

ECJ 7 december 2017, case C-189/16 (Zaniewicz-Dybeck), Free movement, Social insurance

<p>A minimum benefit as defined in Article 50 of Regulation No 1408/71 may not be calculated in accordance with Articles 46(2) and 47 of that Regulation, but benefits receive in other Member States may be taken into account in calculating the minimum benefit.</p>

Summary

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Legal context

Chapter 3 of Regulation No 1408/71 (Coordination Regulation) contains provisions on ‘old age and death (pensions)’, in particular for those who have been subject to the law of two or more Member States. To the extent relevant for this case, Articles 45, 46 and 47 stipulate that a Member State shall take account, where necessary, periods of insurance or of residence spent under the law of any other Member State. The competent institution of a Member State must calculate the ‘theoretical amount’ of the benefit that would have been accrued if the person had been covered by the law of that Member State. Applying the pro rata method, the theoretical amount forms basis of the eventual benefit to which a worker is entitled. Article 47(1)(d) stipulates that periods of accrual completed under the law of other Member States should be calculated based on the average earnings recorded during the periods of insurance completed under the law of the home Member State (‘pro rata calculation’). Further, Article 50 stipulates that the Member State in which the worker resides, must supplement the benefits received by the worker until this reaches the minimum amount of benefit, if the Member State

has such a minimum benefit.

A Swedish pension consists of three parts, namely the graduated pension, the supplementary pension and the guaranteed pension. The former two are based on the actual income of the person. The latter aims to provide basic protection for those with little or no income and is a tax-funded residence-based benefit. Those who not have been insured for the full 40 years are entitled to a pro rata amount. The internal instructions of the Swedish National Insurance fund stipulate that, in calculating the theoretical amount, each insurance period completed in another Member State must be given a notional value corresponding to the average pensionable value of the insurance periods completed in Sweden.

Facts

Mrs Zaniewicz-Dybeck (Zaniewicz), a Polish national, had worked for 19 years in Poland. She then moved to Sweden, where she lived for 24 years and worked there for 23 years before reaching pensionable age. She then applied for a guaranteed pension. (The predecessor of) the Swedish Pension Authority rejected her application. It applied a pro rata calculation, which resulted in a theoretical income above the guaranteed pension. Mrs Zaniewicz appealed against this decision, as the benefits she would receive were much lower than they would have been owing, essentially, to the fact that the pension system in Poland is less beneficial. The National Insurance Fund, the Administrative Court and the Administrative Court of Appeal all dismissed her claims. The referring court wondered whether coming up with a notional amount of benefit from another Member State was the right way to proceed, given the character of the guaranteed pension, and it therefore decided to ask preliminary questions.

Questions put to the ECJ¹

Must Regulation No 1408/71 be interpreted as meaning that, when the competent institution of a Member State calculates a benefit such as the guaranteed pension at issue in the main proceedings, it is necessary to apply the pro rata method of calculation provided for in Article 46(2) of the Regulation and, in accordance with Article 47(1)(d) thereof, to give insurance periods completed by the person concerned in another Member State a notional average value?

Must Regulation No 1408/71 be interpreted as precluding the legislation of a Member State under which, when calculating a benefit such as the guaranteed pension at issue in the main

proceedings, the competent institution must take account of all the retirement pensions which the person concerned actually receives from one or more other Member State?

ECJ's findings

First, the ECJ emphasized that the Coordination Regulation does not set up a common scheme of social security, but allows national schemes to exist. It only aims to ensure their coordination. Consequently, Member States retain the power to organise their own social security schemes. Member States must nonetheless comply with EU law in terms of the right to move and reside. (Salgado González, C-282/11).

Since the Swedish guaranteed pension aims to provide a minimum standard of living, it should be regarded as the minimum benefit, falling within the scope of Article 50 of the Coordination Regulation. Consequently, the right to this benefit should be evaluated based on Article 50 and the relevant national legislation rather than Articles 46(2) and 47 (and national legislation based on these articles).

As regards the second question, the Swedish regulations include foreign pensions that do not qualify as guaranteed pensions, but do form part of the calculation method. Therefore, it must be determined whether Article 50 allows this. The purpose of Article 50 is to guarantee a minimum benefit in cases where the insurance periods of a worker in various countries have been short and, consequently, insufficient for a reasonable living standard (Torri, C-64/77 and Browning, C-22/81). Therefore, in calculating whether a person is entitled to a minimum benefit such as the guaranteed pension at issue, Article 50 specifically provides that the actual amounts of any retirement pensions received from another Member State should be taken into account.

Ruling

Regulation (EEC) No 1408/71 must be interpreted as meaning that, when the competent institution of a Member State calculates a minimum benefit, such as the guaranteed pension at issue in the main proceedings, it is not inappropriate to apply Article 46(2) or Article 47(1)(d) of the regulation. Such a benefit must be calculated in accordance with Article 50 of the regulation, in conjunction with the provisions of national law, without, however, applying national provisions, such as those in the main proceedings, providing for a pro rata calculation.

Regulation No 1408/71 must be interpreted as not precluding the legislation of a Member State under which, when calculating a minimum benefit such as the guaranteed pension at issue in

the main proceedings, the competent institution must take account of all the retirement pensions which the person concerned actually receives from one or more other Member States.

1 As rephrased by the ECJ.

Creator: European Court of Justice (ECJ)

Verdict at: 2017-12-07

Case number: C-189/16 (Zaniewicz-Dybeck)