

Case C-549/22**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

18 August 2022

Referring court:

Centrale Raad van Beroep (Netherlands)

Date of the decision to refer:

15 August 2022

Applicant:

X

Defendant:

Raad van bestuur van de Sociale verzekeringsbank

Subject matter of the main proceedings

The main proceedings concern a dispute between X and the Raad van bestuur van de Sociale verzekeringsbank (Board of Management of the Social Insurance Bank; ‘the Svz’) on the reduction of X’s survivors’ benefit.

Subject matter and legal basis of the request for a preliminary ruling

This request pursuant to Article 267 TFEU concerns the direct effect, personal scope and interpretation of Article 68(4) of the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People’s Democratic Republic of Algeria, of the other part (‘the Association Agreement’). More specifically, it concerns the question whether that provision precludes a reduction in a survivors’ benefit granted by the Netherlands by reason of the fact that the beneficiary resides in Algeria.

Questions referred for a preliminary ruling

1. Must Article 68(4) of the Association Agreement be interpreted as applying to a survivor of a deceased worker who resides in Algeria and who wishes to export her survivors' benefit to Algeria?

If so,

2. Must Article 68(4) of the Association Agreement, having regard to its wording and to its purpose and nature, be interpreted as having direct effect, so that persons to whom that provision applies are entitled to rely on it directly before the Member States' courts to have rules of national law which are contrary to it disapplied?

If so,

3. Must Article 68(4) of the Association Agreement be interpreted as precluding the application of the country-of-residence principle, as referred to in Article 17(3) of the Algemene nabestaandenwet (General Law on Survivors), which results in a restriction on the export of the survivors' benefit to Algeria?

Provisions of EU law relied on

Article 1(68) and (70) of the Association Agreement, Articles 2 and 4 of the Proposal for a Council Decision on the position to be taken by the Community within the Association Council created by the Association Agreement with regard to the adoption of provisions on the co-ordination of the social security systems¹ ('Proposal for a Decision of the Association Council'), and Article 70(3) of Regulation (EG) No 883/2004.

Provisions of national law relied on

Wet Woonlandbeginsel in de sociale zekerheid (Law on the Country-of-Residence Principle in Social Security) and Article 17(3) of the Algemene nabestaandenwet (General Law on Survivors; ['the ANW']).

Succinct presentation of the facts and procedure in the main proceedings

- 1 On 1 July 2012, the Wet Woonlandbeginsel in de sociale zekerheid ('the Wwsz') entered into force in the Netherlands. This law aims to limit the export of benefits to countries outside the EU by introducing the so-called country-of-residence principle. To the extent that export to those countries takes place, Netherlands benefits related to the Netherlands minimum wage or intended to cover certain

¹ COM(2007) 790 final of 12 December 2007.

expenses, and which are provided outside the Netherlands, must be adjusted to local standards.

- 2 With the entry into force of the Wwsz, Article 17(3) of the Algemene nabestaandenwet, among other things, was amended. Pursuant to this amendment, beneficiaries who do not reside in the Netherlands, in a Member State of the EU, in another state that is a party to the Agreement on the European Economic Area (EEA) or in Switzerland, are paid a benefit amounting to a percentage of the amount of survivors' benefit applicable in the Netherlands. For Algeria, that percentage was set at 60% before 2013 and at 40% as of 2016.
- 3 Since 1 January 1999, X, as a survivor of her late husband who was employed and insured in the Netherlands, has been entitled to a survivors' benefit. As of 1 January 2000, that benefit was exported to Algeria, where she resides. As of 1 January 2013, the country-of-residence principle has been applied, as a result of which her survivors' benefit has been considerably reduced. According to the settled case-law of the Centrale Raad van Beroep (Higher Social Security Court; 'the CRvB'), the reduction of a benefit on the basis of the country-of-residence principle must be regarded as a restriction on the export of that benefit. The issue in dispute between the parties is whether Article 68(4) of the Association Agreement precludes that restriction.

The essential arguments of the parties in the main proceedings

- 4 X has submitted that, because of the reduction in her benefit, she is no longer able to support herself.
- 5 The Svb takes the position that Article 68(4) of the Association Agreement does not preclude the application of the country-of-residence principle to X's survivors' benefit. According to the Svb, this is not a provision with direct effect encompassing an obligation to export. The Svb points out that it follows from Article 70 of the Association Agreement that Article 68 contains a framework for a decision to be taken by the Association Council, which has not yet been established. According to the Svb, the wording of Article 68(4) of the Association Agreement does not demonstrate a clear and precisely defined obligation to export benefits. The provision does not lay down an explicit obligation for institutions and, according to the Svb, the terminology used is aimed at removing currency restrictions. The nature and purpose of the Agreement do not lead to a different conclusion. The Court of Justice has not explicitly ruled on the possible direct effect and meaning of Article 68(4). According to the Svb, the Court has implicitly rejected the direct effect of a similar provision in the Association Agreement with Morocco in the judgment in *Kziber*.² Finally, according to the Svb, the personal scope of this provision is not clear. It doubts whether survivors who are not (or have not been) employees themselves can rely on this provision.

² Judgment of 31 January 1991, *Kziber*, C-18/90, EU:C:1991:36.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 6 The CRvB observes that the interpretation of Article 68(4) of the Association Agreement is not only relevant to the benefits that are exported by the Netherlands to Algeria, but also to the export of benefits to other countries with which the EU has concluded an Association Agreement and in which a similar provision is included. The policy of the Netherlands Government to make the export of benefits outside the EU subject to agreements on the enforcement of the lawfulness thereof, and to adjust the amount of certain benefits to the standard of living in the country of residence concerned, may not be compatible with such provisions. In that regard, the SvB referred in particular to the General Convention on Social Security between the Kingdom of the Netherlands and the Kingdom of Morocco, in which the country-of-residence principle was also introduced.

Personal scope of Article 68(4) of the Association Agreement

- 7 The question is, first, whether X, as a survivor who is not herself a worker within the meaning of the Association Agreement, falls within the scope of Article 68(4) of that Agreement.
- 8 Article 68(4) of the Association Agreement states that workers may freely transfer survivors' pensions to Algeria. Unlike Article 68(1) and (3), Article 68(4) refers only to workers and not also to family members, whether or not they are living with them within the EU. Nor does it refer to survivors. It is therefore not entirely clear whether this provision means that only workers, including beneficiaries of pensions, can freely transfer their pensions and annuities acquired in the Member States, or whether it also covers the survivors' pension to which survivors are entitled as a result of the death of those workers.
- 9 If recipients of benefits who are survivors also fall under this provision, the question arises whether it is only intended that recipients of benefits who live in the Netherlands may freely transfer the benefit amounts to Algeria, or whether recipients of benefits who live in Algeria may also rely on this provision. The CRvB is of the opinion that the latter interpretation is supported by the fact that Article 68(4) of the Association Agreement makes an exception for the free transfer of special non-contributory benefits. This exception appears to be based on Article 70(3) of Regulation No 883/2004, which provides that Article 7 of that regulation, which governs the export of benefits, does not apply to special non-contributory benefits. Such benefits are granted under Article 70(4) of that regulation exclusively by the Member State in which the person concerned resides, in accordance with the legislation of that Member State. The exception provided for in Article 68(4) of the Association Agreement is useful only if the main rule does indeed apply to beneficiaries residing outside the Member State responsible for payment.
- 10 Clarification of the intention of that provision can also be sought in the Proposal for a Decision of the Association Council. According to Article 2 of that Decision,

it applies to workers who are nationals of Algeria [...] and their survivors. Under Article 4 of that Decision, survivors' benefits may not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the beneficiary resides in Algeria. However, that Decision has not yet been adopted.

- 11 A broad interpretation of the personal scope of Article 68(4) of the Association Agreement is also supported by the fact that it could be regarded as contrary to the purpose and the spirit of that Agreement to deny appropriate protection to the surviving family members and to the survivors of Algerian workers who are or were subject to the legislation of a Member State at the time of their employment.
- 12 If the appellant in her situation falls within the scope of Article 68(4) of the Association Agreement, the following questions must be answered.

Direct effect of Article 68(4) of the Association Agreement

- 13 According to the settled case-law of the Court of Justice, a provision of an agreement concluded by the EU with third States must be considered to have direct effect when, having regard to its wording and to the purpose and nature of the agreement, it contains a clear and precise obligation which does not require any further measures for its implementation and effect.
- 14 The implementation and effect of Article 68 of the Association Agreement appear to require further measures. This article contains a number of general principles, the precise material content of which is to be determined by a decision of the Association Council on the basis of Article 70(1). Thereafter, effective implementation requires rules for cooperation between the States concerned in the fields of management and control. These rules will be included in a decision based on Article 70(2). Seen in this light, Article 70 of the Association Agreement seems to preclude Article 68 having direct effect.
- 15 However, the fact that the implementation of Article 68 requires the adoption of more detailed substantive and administrative rules does not mean that no part of that provision is capable of having direct effect. The Court has attributed direct effect to the prohibition of discrimination in the field of social security in the previous Cooperation Agreements between the EEA and Morocco and Algeria respectively, as well as to similar provisions in the Euro-Mediterranean Association Agreement with Morocco, although those provisions also envisaged the need for further decisions to be taken (in particular, the judgments and orders of the Court in the *Kziber*,³ *Krid*,⁴ *Echouikh*⁵ and *El Youssfi*⁶ cases). The Court

³ See footnote 1.

⁴ Judgment of 5 April 1995, *Krid*, C-103/94, EU:C:1995:97.

⁵ Order of 13 June 2006, *Echouikh*, C-336/05, EU:C:2006:394.

⁶ Order of 17 April 2007, *El Youssfi*, C-276/06, EU:C:2007:215.

considered it important in that regard that the object of the Cooperation Agreement, namely to promote overall cooperation between the contracting parties, confirms that the principle of non-discrimination enshrined in paragraph 1 is capable of directly governing the legal situation of individuals.

- 16 It can furthermore be inferred from the case-law of the Court that a provision such as Article 68(2) of the Association Agreement, which relates to the aggregation of periods of insurance, of employment or of residence, does not lend itself to direct effect. According to the Court, further coordination measures are needed to enable the obligation laid down in such a provision to be applied in practice because of possible problems of a technical nature (*Taflan-Met*⁷ and *Sürül*⁸ judgments).
- 17 According to the CRvB, the Court has not yet explicitly ruled on the question of whether Article 68(4) of the Association Agreement – or similar provisions in the earlier Cooperation Agreements with Algeria or Morocco or in Association Agreements with other countries – have direct effect. However, an indication can possibly be read into paragraph 21 of the *Krid* judgment that paragraphs 2, 3 and 4 of Article 68 of the Association Agreement are subject, in their implementation or effects, to the adoption of a subsequent measure.
- 18 The wording of Article 68(4) of the Association Agreement points primarily to the removal of currency restrictions and there may be (some) doubt as to whether the provision includes an obligation on administrative bodies to export benefits to persons resident in Algeria and, if so, whether the provision precludes the application of the country-of-residence principle. However, the fact that a provision of an Association Agreement requires further interpretation by the Court of Justice does not preclude that provision, once further interpreted, from constituting a sufficiently clear and precise obligation and thus to lend itself to direct effect.
- 19 The purpose of the Association Agreement is, inter alia, to promote cooperation between the Contracting Parties in the economic, social, cultural and financial fields, thus establishing closer relations between the EU and the third country concerned.⁹ Therefore, the purpose and nature of the Association Agreement does not preclude Article 68(4) thereof having direct effect.
- 20 In so far as Article 68(4) also contains an obligation for the administrative authorities to export benefits to persons resident in Algeria, it cannot be automatically said that the implementation of such an obligation requires no further measure. Article 70(2) provides that rules are to be adopted for administrative cooperation providing the necessary management and monitoring guarantees. Without such guarantees, the lawfulness of the benefits to be exported

⁷ Judgment of 10 September 1996, *Taflan-Met and Others*, C-277/94, EU:C:1996:315.

⁸ Judgment of 4 May 1999, *Sürül*, C-262/96, EU:C:1999:228.

⁹ Opinion of Advocate General La Pergola in *Sürül*, C-262/96, EU:C:1998:55.

cannot be guaranteed or can be guaranteed to a significantly lesser extent. For that reason, it could be assumed that a citizen cannot rely directly on Article 68(4) of the Association Agreement.

- 21 On the other hand, the Court has held in the *Akdas*¹⁰ judgment that an individual can rely before a national court on the export provision of Article 6(1) of Decision No 3/80 of the EEC-Turkey Association Council¹¹ without further implementing measures being required. However, this judgment does not concern a provision involving a matter of principle, but a provision which, in clear, precise and unconditional terms, prohibits the reduction, modification, suspension, withdrawal or confiscation of the benefits referred to in that article by reason of the fact that the beneficiary resides in Turkey or in another Member State. Moreover, the *Akdas* judgment relates to a different legal context to the situation at issue in this case. It follows from the *El-Yassini*¹² judgment, which concerns the EEC-Morocco Agreement, that there are substantial differences between not only the wording but also the object and purpose of the rules governing the EEC-Turkey Association and the EEC-Morocco Agreement. It follows that the Court's case-law on the rules governing the EEC-Turkey Association cannot be applied by analogy to the EEC-Morocco Agreement. The same may be true of the Association Agreement with Algeria. Incidentally, the *El-Yassini* judgment concerned the refusal to extend the right of residence of a Moroccan worker and not the export of benefits. Furthermore, the *Akdas* judgment does not concern the interpretation of a provision in the Association Agreement with Turkey, but the interpretation of a provision of Decision 3/80, which was adopted on the basis of Article 39 of the Additional Protocol to the Association Agreement and which, as the Court ruled in the *Taflan-Met* judgment, had already entered into force. The CRvB is therefore uncertain whether the line of reasoning set out in the *Akdas* judgment also applies to Article 68(4) of the Association Agreement.
- 22 In view of the foregoing considerations, the CRvB will refer to the Court the question of whether Algerian workers or their survivors can rely directly on Article 68(4) of the Association Agreement.

Scope of Article 68(4) of the Association Agreement

- 23 According to the CRvB, Article 68(4) of the Association Agreement, which provides for the free transfer of certain benefits to Algeria at a regular rate, also includes an obligation to export benefits to persons residing in Algeria, but it has not yet been established that this provision also precludes a reduction of the benefit on the basis of the country-of-residence principle.

¹⁰ Judgment of 26 May 2011, *Akdas and Others*, C-485/07, EU:C:2011:346.

¹¹ Decision of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish Workers and members of their families.

¹² Judgment of 2 March 1999, *Eddline El-Yassini*, C-416/96, EU:C:1999:107, paragraph 61.

- 24 On that point too, the Proposal for a Decision of the Association Council referred to in paragraph 10 may be relevant. Article 4 of the proposed Decision provides that certain benefits will not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the beneficiary is resident in Algeria. With regard to a similar provision in Decision 3/80 of the EEC-Turkey Association Council, the Court held in *Akdas* that this rule lays down the prohibition of any restriction on the export of rights acquired by the Turkish nationals concerned under the legislation of a Member State and that it sets down the principle of prohibition of residence clauses. Although the Decision referred to in paragraph 10 has not (yet) been adopted, it may provide guidance on the interpretation of Article 68(4) of the Association Agreement. A corresponding interpretation to that in the *Akdas* judgment would then appear to be indicated.