

Case C-45/22**Summary of the request for a preliminary ruling under Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

20 January 2022

Referring court:

Tribunal du travail francophone de Bruxelles (Belgium)

Date of the decision to refer:

4 January 2022

Applicant:

HK

Defendant:

Service fédéral des Pensions (SFP)

1. Subject matter and facts of the dispute:

- 1 HK receives a retirement pension for the activities he pursued as an employed person in Belgium and Spain.
- 2 His spouse, who had been employed in Belgium, Spain and Finland, died on 29 November 2016.
- 3 HK is therefore entitled to survivors' pensions. The competent Spanish institution has awarded HK a survivors' pension without applying any ceiling in respect of overlapping with other pensions. By contrast, the competent Belgian and Finnish institutions apply such a ceiling.
- 4 By decision of 18 September 2019, the Service fédéral des Pensions (Federal Pensions Service) (Belgium) awarded HK a Belgian survivors' pension.
- 5 HK is challenging the calculation of that pension and, more specifically, the application of the rules against overlapping laid down in EU law.

2. Provisions at issue:

A. *EU law*

Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

6 Article 53, entitled ‘Rules to prevent overlapping’, states:

‘1. Any overlapping of invalidity, old age and survivors’ benefits calculated or provided on the basis of periods of insurance and/or residence completed by the same person shall be considered to be overlapping of benefits of the same kind.

2. Overlapping of benefits which cannot be considered to be of the same kind within the meaning of paragraph 1 shall be considered to be overlapping of benefits of a different kind.’

7 Article 55, entitled ‘Overlapping of benefits of a different kind’, provides:

‘1. If the receipt of benefits of a different kind or other income requires the application of the rules to prevent overlapping provided for by the legislation of the Member States concerned regarding:

(a) two or more independent benefits, the competent institutions shall divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules; ...’

3. Positions of the parties:

8 It is common ground between the parties that, in the present case, the benefits in question are of a different kind and that two survivors’ pensions are subject to an overlapping rule under national law, namely the Belgian survivors’ pension and the Finnish survivors’ pension.

9 The parties also consider that the Belgian overlapping rule is therefore mitigated by Article 55(1)(a) of Regulation No 883/2004. However, they disagree as to how it should be applied.

A. *Federal Pensions Service*

10 The Federal Pensions Service considers that the expression ‘as they have been taken into account’ in Article 55(1)(a) of Regulation No 883/2004 covers only the part of the benefits which is taken into account in order to limit overlapping between benefits of a different kind, thus the amount which exceeds the ceiling in respect of overlapping. In its view, it is the amount of the benefits taken into account to reduce the survivors’ pension (in the present case EUR 11 418.87

representing the portion of the retirement pensions which exceeds the ceiling in respect of overlapping) which must be divided by the number of survivors' pensions subject to the rules to prevent overlapping between benefits of a different kind (in the present case the Belgian and Finnish survivors' pensions, since the Spanish survivors' pension is not reduced). That amount divided by two (Belgian and Finnish survivors' pensions subject to the ceiling) will then be deducted from the survivors' pension.

- 11 Its calculation is essentially as follows:

Survivors' pension: EUR 7 638.46

Ceiling in respect of overlapping: EUR 16 458.42 (110% of the full survivors' pension)

Retirement pensions to be taken into consideration: EUR 20 238.83

Calculation of the amount by which the ceiling in respect of overlapping has been exceeded:

EUR 7 638.46 (amount of the survivors' pension) + EUR 20 238.83 (total amount of retirement pensions) – EUR 16 458.42 (ceiling in respect of overlapping) = EUR 11 418.87.

Calculation of the reduced survivors' pension:

EUR 7 638.46 – EUR 11 418.87

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(amount by which the ceiling has been exceeded divided by the number of survivors' pensions subject to overlapping rules, in the present case the Belgian and Finnish survivors' pensions) = EUR 1 929.03

- 12 The Federal Pensions Service also notes that the Finnish authorities followed exactly the same process when calculating the Finnish survivors' pension notified to HK on 10 November 2017.

B. HK

- 13 HK considers that Article 55(1)(a) of Regulation No 883/2004 covers the income of the pension recipient which is taken into account by the national rules to prevent overlapping and that it is the amounts of the other pensions which must be divided by two.
- 14 His calculation therefore differs from the Federal Pensions Service's calculation in that regard:

Calculation of the amount by which the ceiling in respect of overlapping has been exceeded:

EUR 7 638.46 (amount of the survivors' pension) + EUR 20 238.83

2

(total amount of retirement pensions divided by the number of survivors' pensions subject to overlapping rules, in the present case the Belgian and Finnish survivors' pensions) – EUR 16 458.42 (ceiling in respect of overlapping)

= EUR 1 299.45

Calculation of the reduced survivors' pension:

EUR 7 638.46 – EUR 1 299.45 = EUR 6 399.01

4. Findings of the Labour Court:

- 15 HK's situation involves two foreign elements in that he receives a Belgian and a Spanish retirement pension for employed persons and, following the death of his spouse, Belgian, Spanish and Finnish survivors' pensions for employed persons, since his wife had worked and paid contributions in various Member States (Belgium, Spain, Finland).
- 16 The Belgian legislation authorises the overlapping of a survivors' pension and a retirement pension up to a ceiling equal to 110% of the amount of the survivors' pension that would have been awarded to the surviving spouse for a complete contributions record.
- 17 Implementing Article 48 TFEU, Regulation No 883/2004 coordinates the social security systems of the Member States and governs in particular the rules against overlapping provided for in the legislation of the Member States. It replaced Regulation No 1408/71. The Court of Justice has recalled on many occasions that 'the provisions both of Regulation No 1408/71 and of Regulation No 883/2004 do not set up a common scheme of social security, but have the sole objective of ensuring coordination between the various national schemes which continue to exist' (judgments of 21 February 2013, *Salgado González*, C-282/11, EU:C:2013:86; of 7 December 2017, *Zaniewicz-Dybeck*, C-189/16, EU:C:2017:946; and of 21 October 2021, *Zakład Ubezpieczeń Społecznych I Oddział w Warszawie*, C-866/19, EU:C:2021:865, paragraph 25).
- 18 The overlapping of the survivors' pension for an employed person and the various retirement pensions (Belgian and foreign) must be regarded as an overlapping of benefits of a different kind. Benefits calculated on the basis of the professional careers of two different persons cannot be regarded as benefits of the same kind. In the present case, HK's Belgian survivors' pension was calculated on the basis

of his late wife's professional career whereas his Belgian and Spanish retirement pensions have been awarded to him personally on the basis of his own professional activities. This case therefore does not involve benefits of the same kind.

19 In the light of the calculations submitted, HK is entitled to a survivors' pension solely by virtue of the application of Article 55(1)(a) of Regulation No 883/2004. Another worker with a Belgian retirement pension for employed persons of an amount equivalent to that received by HK, thus EUR 20 238, would not have received any survivors' pension in Belgium.

20 HK is therefore in a more advantageous position as a result of the application of the European legislation.

21 The rule contained in Article 55(1)(a) of Regulation No 883/2004 did not appear as such in its predecessor, Regulation No 1408/71. More specifically, Article 46c(1) of Regulation No 1408/71 provided:

'If the receipt of benefits of a different kind or other income entails the reduction, suspension or withdrawal of two or more benefits referred to in Article 46(1)(a)(i), the amounts which would not be paid in strict application of the provisions concerning reduction, suspension or withdrawal provided for by the legislation of the Member States concerned shall be divided by the number of benefits subject to reduction, suspension or withdrawal'.

22 Article 55(1)(a) of Regulation No 883/2004 therefore appears to have amended the rule set out in Article 46c(1) of Regulation No 1408/71. According to one author, it is therefore no longer the amount of the benefit which is not paid which is divided, but the benefits or income taken into account when applying the rule to prevent overlapping.

According to another author, by contrast, if several independent benefits must be reduced simultaneously by applying those rules, the amount to which the reduction, suspension or withdrawal relates must be divided by the number of benefits subject to reduction, suspension or withdrawal.

23 The Labour Court finds that in the present case there is an issue with the interpretation of the rule contained in Article 55(1)(a) of Regulation No 883/2004 and considers it necessary to refer the following two questions to the Court for a preliminary ruling.

5. Questions referred for a preliminary ruling:

24 The Labour Court refers the following questions for a preliminary ruling:

- Must the rule laid down in Article 55(1)(a) of Regulation (EC) No 883/2004 that the competent institutions are to divide the amounts of the benefit or

benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules be interpreted as meaning that the income as such taken into account when applying the rule to prevent overlapping must be divided by the number of survivors' pensions impacted by the rules against overlapping?

- On the contrary, must the rule laid down in Article 55(1)(a) of Regulation (EC) No 883/2004 that the competent institutions are to divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules be interpreted as meaning that it is not the income as such taken into account when applying the rule to prevent overlapping, but rather it is the portion of the income which exceeds a ceiling in respect of overlapping, as, for example, laid down by the national rule at issue, that must be divided by the number of survivors' pensions impacted by the rules against overlapping?