JUDGMENT OF THE COURT

18 April 2024[*]

(*Regulation (EC) No 883/2004 – Article 58 – Minimum benefit – Invalidity benefits – Calculation of benefits – Type B legislation – Coordination of national social security systems – Equality of treatment*)

In Case E-3/23,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the National Insurance Court (*Trygderetten*), in the case between

A

and

Arbeids- og velferdsdirektoratet (Norwegian Labour and Welfare Directorate),

concerning the interpretation of Article 58 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

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[*] Language of the request: Norwegian. Translations of national provisions are unofficial and based on those contained in the documents of the case.

having considered the written observations submitted on behalf of:

- A, represented by Olav Lægreid, attorney;
- the Norwegian Government, represented by Ida Thue, acting as Agent;
- the EFTA Surveillance Authority (“ESA”), represented by Ewa Gromnicka, Marte Brathovde, Kyrre Isaksen and Melpo-Menie Joséphidès, acting as Agents; and
- the European Commission (“the Commission”), represented by Nicola Yerrell and Bernd-Roland Killmann, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of A, represented by Olav Lægreid; the Norwegian Government, represented by Ida Thue; ESA, represented by Ewa Gromnicka and Marte Brathovde; and the Commission, represented by Nicola Yerrell, at the hearing on 19 October 2023,

gives the following

Judgment

I Legal background

EEA law

1 Article 28(1) of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) reads:

> *Freedom of movement for workers shall be secured among EC Member States and EFTA States.*

2 Article 29 EEA reads:

> *In order to provide freedom of movement for workers and self-employed persons, the Contracting Parties shall, in the field of social security, secure, as provided for in Annex VI, for workers and self-employed persons and their dependants, in particular:*
>
> *(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;*
> *(b) payment of benefits to persons resident in the territories of Contracting Parties.*

3 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1; and Norwegian EEA Supplement 2015 No 76, p. 40) (“the Regulation” or “Regulation 883/2004”), as corrected by OJ 2004 L 200, p. 1, and OJ 2007 L 204, p. 30, was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011 (OJ 2011 L 262, p. 33; and Norwegian EEA Supplement 2011 No 54, p. 46). The Regulation is referred to at point 1 of Annex VI (Social Security) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 31 May 2012 and the decision entered into force on 1 June 2012. Regulation 883/2004 was amended by Regulation No 465/2012 of the European Parliament and of the Council of 22 May 2012, amending Regulation 883/2004 on the coordination of social security systems and Regulation 987/2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2012 L 149, p. 4; and Norwegian EEA Supplement 2017 No 6, p. 337) (“Regulation 465/2012”). Regulation 465/2012 was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 14/2013 of 1 February 2013 (OJ 2013 L 144, p. 19; and Norwegian EEA Supplement 2013 No 31, p. 23). The Regulation is referred to at points 1 and 2 of Annex VI (Social Security) to the EEA Agreement. No constitutional requirements were indicated and the decision entered into force on 2 February 2013.

4 Recitals 1, 4 and 5 of the Regulation read:

> *(1) The rules for coordination of national social security systems fall within the framework of free movement of persons and should contribute towards improving their standard of living and conditions of employment.*
>
> …
>
> *(4) It is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination.*
>
> *(5) It is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the different national legislation for the persons concerned.*

5 Article 1(t) of the Regulation entitled “Definitions” reads:

> *(t) ‘period of insurance’ means periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance;*

6 Article 2(1) of the Regulation entitled “Persons covered” reads:

This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.

7 Article 3 of the Regulation entitled "Matters covered" reads, in extract:

1. This Regulation shall apply to all legislation concerning the following branches of social security:

…

(c) invalidity benefits;

…

2. Unless otherwise provided for in Annex XI, this Regulation shall apply to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or shipowner.

3. This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70.

…

8 Article 4 of the Regulation entitled "Equality of treatment" reads:

Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.

9 Article 5 of the Regulation entitled "Equal treatment of benefits, income, facts or events" reads:

Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;

(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that

Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.

10 Article 6 of the Regulation entitled "Aggregation of periods" reads:

Unless otherwise provided for by this Regulation, the competent institution of a Member State whose legislation makes:

— the acquisition, retention, duration or recovery of the right to benefits,

— the coverage by legislation,

or

— the access to or the exemption from compulsory, optional continued or voluntary insurance,

conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation which it applies.

11 Article 9 of the Regulation entitled "Declarations by the Member States on the scope of this Regulation", as replaced by Regulation 465/2012, reads:

1. The Member States shall notify the European Commission in writing of the declarations made in accordance with point (l) of Article 1, the legislation and schemes referred to in Article 3, the conventions entered into as referred to in Article 8(2), the minimum benefits referred to in Article 58, and the lack of an insurance system as referred to in Article 65a(1), as well as substantive amendments. Such notifications shall indicate the date from which this Regulation will apply to the schemes specified by the Member States therein.

2. These notifications shall be submitted to the European Commission every year and shall be given the necessary publicity.

12 Title III, Chapter 4 of the Regulation entitled "Invalidity benefits" contains Articles 44 to 49. Article 44 of the Regulation entitled "Persons subject only to type A legislation" reads:

1. For the purposes of this Chapter, 'type A legislation' means any legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance or residence and which is expressly included by the competent Member State in Annex VI, and 'type B legislation' means any other legislation.

2. A person who has been successively or alternately subject to the legislation of two or more Member States and who has completed periods of insurance or residence exclusively under type A legislations shall be entitled to benefits only from the institution of the Member State whose legislation was applicable at the time when the incapacity for work followed by invalidity occurred, taking into account, where appropriate, Article 45, and shall receive such benefits in accordance with that legislation.

3. A person who is not entitled to benefits under paragraph 2 shall receive the benefits to which he/she is still entitled under the legislation of another Member State, taking into account, where appropriate, Article 45.

4. If the legislation referred to in paragraph 2 or 3 contains rules for the reduction, suspension or withdrawal of invalidity benefits in the case of overlapping with other income or with benefits of a different kind within the meaning of Article 53(2), Articles 53(3) and 55(3) shall apply mutatis mutandis.

13 Article 46 of the Regulation entitled "Persons subject either only to type B legislation or to type A and B legislation" reads:

1. A person who has been successively or alternately subject to the legislation of two or more Member States, of which at least one is not a type A legislation, shall be entitled to benefits under Chapter 5, which shall apply mutatis mutandis *taking into account paragraph 3.*

2. However, if the person concerned has been previously subject to a type B legislation and suffers incapacity for work leading to invalidity while subject to a type A legislation, he/she shall receive benefits in accordance with Article 44, provided that:

— he satisfies the conditions of that legislation exclusively or of others of the same type, taking into account, where appropriate, Article 45, but without having recourse to periods of insurance or residence completed under a type B legislation, and

— he does not assert any claims to old-age benefits, taking into account Article 50(1).

3. A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned, provided that the concordance between the legislation of these Member States on conditions relating to the degree of invalidity is acknowledged in Annex VII.

14 Article 47 of the Regulation entitled "Aggravation of invalidity" reads:

1. In the case of aggravation of an invalidity for which a person is receiving benefits under the legislation of one or more Member States, the following provisions shall apply, taking the aggravation into account:

(a) the benefits shall be provided in accordance with Chapter 5, applied mutatis mutandis;

(b) however, where the person concerned has been subject to two or more type A legislations and since receiving benefit has not been subject to the legislation of another Member State, the benefit shall be provided in accordance with Article 44(2).

2. If the total amount of the benefit or benefits payable under paragraph 1 is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously competent for payment, that institution shall pay him/her a supplement equal to the difference between the two amounts.

3. If the person concerned is not entitled to benefits at the expense of an institution of another Member State, the competent institution of the Member State previously competent shall provide the benefits in accordance with the legislation it applies, taking into account the aggravation and, where appropriate, Article 45.

15 Title III, Chapter 5 of the Regulation entitled "Old-age and survivors' pensions" contains Articles 50 to 60. Article 50 of the Regulation entitled "General provisions" reads:

1. All the competent institutions shall determine entitlement to benefit, under all the legislations of the Member States to which the person concerned has been subject, when a request for award has been submitted, unless the person concerned expressly requests deferment of the award of old-age benefits under the legislation of one or more Member States.

2. If at a given moment the person concerned does not satisfy, or no longer satisfies, the conditions laid down by all the legislations of the Member States to which he/she has been subject, the institutions applying legislation the conditions of which have been satisfied shall not take into account, when performing the calculation in accordance with Article 52(1) (a) or (b), the periods completed under the legislations the conditions of which have not been satisfied, or are no longer satisfied, where this gives rise to a lower amount of benefit.

3. Paragraph 2 shall apply mutatis mutandis *when the person concerned has expressly requested deferment of the award of old-age benefits.*

4. A new calculation shall be performed automatically as and when the conditions to be fulfilled under the other legislations are satisfied or when a person requests the award of an old-age benefit deferred in accordance with paragraph 1, unless the periods completed under the other legislations have already been taken into account by virtue of paragraph 2 or 3.

16 Article 52(1) to (3) of the Regulation entitled "Award of benefits" reads:

1. The competent institution shall calculate the amount of the benefit that would be due:

(a) under the legislation it applies, only where the conditions for entitlement to benefits have been satisfied exclusively under national law (independent benefit);

(b) by calculating a theoretical amount and subsequently an actual amount (pro rata benefit), as follows:

(i) the theoretical amount of the benefit is equal to the benefit which the person concerned could claim if all the periods of insurance and/or of residence which have been completed under the legislations of the other Member States had been completed under the legislation it applies on the date of the award of the benefit. If, under this legislation, the amount does not depend on the duration of the periods completed, that amount shall be regarded as being the theoretical amount;

(ii) the competent institution shall then establish the actual amount of the pro rata benefit by applying to the theoretical amount the ratio between the duration of the periods completed before materialisation of the risk under the legislation it applies and the total duration of the periods completed before materialisation of the risk under the legislations of all the Member States concerned.

2. Where appropriate, the competent institution shall apply, to the amount calculated in accordance with subparagraphs 1(a) and (b), all the rules relating to reduction, suspension or withdrawal, under the legislation it applies, within the limits provided for by Articles 53 to 55.

3. The person concerned shall be entitled to receive from the competent institution of each Member State the higher of the amounts calculated in accordance with subparagraphs 1(a) and (b).

17 Article 58 of the Regulation entitled "Award of a supplement" reads:

1. A recipient of benefits to whom this chapter applies may not, in the Member State of residence and under whose legislation a benefit is payable to

him/her, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with this chapter.

2. The competent institution of that Member State shall pay him/her throughout the period of his/her residence in its territory a supplement equal to the difference between the total of the benefits due under this chapter and the amount of the minimum benefit.

18 Title III, Chapter 9 of the Regulation entitled "Special non-contributory cash benefits" consists of Article 70 entitled "General provision", which reads:

1. This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance.

2. For the purposes of this Chapter, 'special non-contributory cash benefits' means those which:

(a) are intended to provide either:

(i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;

or

(ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned,

and

(b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone,

and

(c) are listed in Annex X.

3. Article 7 and the other chapters of this Title shall not apply to the benefits referred to in paragraph 2 of this Article.

4. The benefits referred to in paragraph 2 shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. Such benefits shall be provided by and at the expense of the institution of the place of residence.

National law

19 Regulation 883/2004 has been made part of Norwegian law by Section 1-3 a of the Norwegian National Insurance Act (*folketrygdloven*) (the “NIA”). Section 1-3 a NIA entitled “Implementation of the social security coordination regulation and the implementing regulation” reads:

Annex VI No 1 to the EEA Agreement (Regulation (EC) No 883/2004 on the coordination of social security schemes, as amended by Regulation (EC) No 988/2009, Regulation (EU) No 1244/2010, Regulation (EU) No 465/2012, Regulation (EU) No 1224/2012, Regulation (EU) No 517/2013, Regulation (EU) No 1372/2013, Regulation (EU) No 1368/2014 and Regulation (EU) 2017/492) (the social security regulation) applies as [Norwegian] law with the adaptations that follow from Annex VI, Protocol 1 and the agreement in general.

Annex VI No 2 to the EEA Agreement (Regulation (EC) No 987/2009 laying down detailed rules for the implementation of Regulation (EC) No 883/2004 on the coordination of social security schemes, as amended by Regulation (EU) No 1244/2010, Regulation (EU) No 465/2012, Regulation (EU) No 1224/2012, Regulation (EU) No 1372/2013, Regulation (EU) No 1368/2014 and Regulation (EU) 2017/492) (the implementing regulation) applies as [Norwegian] law with the adaptations that follow from Annex VI, Protocol 1 and the agreement in general.

The provisions given in or pursuant to this Act shall be waived to the extent necessary to comply with obligations arising from the regulations mentioned in the first and second paragraphs.

20 Section 2-1 NIA entitled “Persons residing in Norway” reads:

Persons who reside in Norway are compulsory members of the national insurance scheme.

Residents of Norway are those who stay in Norway, when the stay is intended to last or has lasted at least 12 months. A person who moves to Norway is considered resident from the date of entry.

It is a condition for membership that the person concerned has legal residence in Norway.

In the event of a temporary absence from Norway that is not intended to last more than 12 months, the person concerned is still considered resident here. However, this does not apply if the person concerned is to stay or has stayed abroad for more than six months per year for two or more consecutive years.

21 Chapter 12 NIA entitled “Invalidity benefits” is part of Part IV of the NIA, entitled “Benefits in the event of illness, etc.” The benefit provided under Chapter 12 NIA is also listed by Norway in its declaration in accordance with Article 9 of the Regulation 883/2004 as a cash benefit falling within the scope of invalidity benefits as provided for in Regulation.

22 Section 12-1 NIA entitled “Purpose” reads:

The purpose of invalidity benefits is to ensure income for persons who have had their earning capacity permanently reduced due to illness, injury or defect.

23 Section 12-1 a NIA, which was added on 25 November 2022, is entitled “The relationship to provisions on international coordination of social security systems”. It reads:

Invalidity benefits are a benefit in the event of invalidity under the social security regulation. Provisions in this chapter shall be disapplied to the extent necessary in respect of relevant provisions in the Main Part of the EEA Agreement, the social security regulation, the implementing regulation and bi- and multilateral social security agreements, see Sections 1-3 a and 1-3 b.

The Ministry may, by regulation, issue provisions supplementing or facilitating compliance with provisions on benefits in the event of invalidity in the social security regulation and the implementing regulation.

24 Section 12-2 NIA entitled “Prior membership” reads:

It is a condition for entitlement to invalidity benefits that the person concerned has been a member of the national insurance scheme for the five years preceding the onset of invalidity, see Section 12-8. In the assessment of whether the condition is fulfilled, no account shall be taken of periods spent serving with international organisations or bodies of which the Norwegian State is a member, to which it makes financial contributions or to which it is responsible for contributing to staffing.

The condition of five years of prior membership in the first paragraph shall not apply to a person who has been a member of the insurance scheme for at

least one year immediately before he or she submits a claim for invalidity benefits, if

a. the person concerned became disabled before turning 26 years of age and at that time was a member of the national insurance scheme, or

b. the person concerned, after turning 16 years, has been a member of the national insurance scheme except for a maximum of five years.

The condition in the first paragraph shall not apply if the person concerned was a member of the national insurance scheme at the time of the onset of invalidity and the invalidity benefit in the event of a 100 per cent degree of invalidity:

a. calculated on the basis under the first paragraph of Section 12-11 will at least correspond to half of the high rate under the third sentence of the second paragraph of Section 12-13, or

b. calculated on the basis of periods of insurance will at least correspond to half of the minimum benefit under the second paragraph of Section 12-13.

Future periods of insurance shall not be included, see the fifth paragraph of Section 12-12.

25 Section 12-3 NIA entitled "Continued membership" reads:

It is a condition for the right to invalidity benefits that the person concerned is still a member of the national insurance scheme.

A person who is not a member of the national insurance scheme still receives invalidity benefits if the person concerned has at least 20 years of periods of insurance according to Section 12-12, second paragraph (length of residence). To those who have less than 20 years of residence, invalidity benefits are provided on the basis of the calculation basis according to Section 12-11, but so that years before the onset of invalidity when the person concerned has not had a pension-generating income above the basic amount, are not counted as a period of insurance when calculating the benefit.

Invalidity benefits according to Section 12-2 second and third paragraphs on exemption from membership of the national insurance scheme up to the onset of invalidity are only retained as long as the person concerned is a member of the national insurance scheme. The same applies to invalidity benefits on the basis of Section 12-13, third paragraph, on invalidity benefits for disabled young people.

In the event of changes to the invalidity benefit according to the provisions here, the supplement to invalidity benefit for the surviving spouse (survivor's supplement) according to Section 12-18 must be changed proportionately.

26 Section 12-4 NIA provides that the recipient must be aged between 18 and 67. Section 12-5 requires that the person concerned has undergone appropriate treatment to improve the capacity for gainful employment. Section 12-6 sets out the condition that the person in question has a permanent illness, injury or defect, whilst, in accordance with Section 12-7, it is a condition that the ability to perform gainful employment is reduced by at least half. Section 12-8 defines the onset of invalidity as the time at which the capacity for gainful employment was permanently reduced by at least half. Sections 12-9 and 12-10 contain detailed rules on the determination of the degree of invalidity.

27 Section 12-11 NIA entitled "Basis for calculation of invalidity benefits" reads:

Invalidity benefits shall be calculated on the basis of pension-generating income, see Section 3-15, during the five last calendar years preceding the onset of invalidity, see Section 12-8. The average income during the three best income years shall be used as a basis.

For years when a person has received an invalidity benefit, pension-generating income, and income that corresponds to the calculation basis for the invalidity benefit adjusted for the determined degree of invalidity, must be included in the basis. Total income cannot, however, exceed the highest of the calculation basis and the pension-generating income. The Ministry can issue regulations on what income is to be used as a basis for years when a person has received an invalidity pension.

For years when a member has served military or compulsory military service or such voluntary service, an income of at least three times the average basic amount shall be taken as a basis. If the member had a higher income in the year before the service began, this income is used.

Years in which a member has received pension accrual on the basis of care work pursuant to Section 3-16 or Section 20-8 shall be disregarded if this is to the benefit of the person concerned. The year before and the year after such years are then considered to follow immediately after each other.

Pension-generating income above six times the average basic amount in a calendar year is not included in the basis for invalidity benefits.

The pension-generating income in the individual calendar year must be adjusted in accordance with changes in the basic amount up until the time when the invalidity benefit is given effect.

The basis for the invalidity benefit is regulated in accordance with subsequent changes in the basic amount.

28 Section 12-12 NIA entitled “Periods of insurance” reads:

Periods of insurance are a factor used in the calculation of invalidity benefits, see the fourth paragraph of Section 12-13.

The period of insurance is the period of time from 1 January 1967 in which a person has been a member of the national insurance scheme with entitlement to benefits under Chapters 12, 16, 17, 19 and 20. The period of insurance shall be calculated from the time the person turns 16 years of age up to and including the year in which he or she turns 66 years of age. The time before 1 January 1967 shall also be counted as a period of insurance if the person concerned would then have fulfilled the conditions for insurance coverage as referred to in the first sentence.

A period of insurance shall also include a future period of insurance from the onset of invalidity (see Section 12-8) up to and including the year in which the person concerned turns 66 years of age. If less than 4/5 of the time between when the person turns 16 years of age and the onset of invalidity (acquisition period) can count as a period of insurance, the future period of insurance shall amount to 40 years, with a deduction of 4/5 of the acquisition period.

When the condition on prior membership is fulfilled under the second paragraph of Section 12-2, a future period of insurance shall be counted at the earliest from the time when the person concerned was last a member of the national insurance scheme. The time up to that point in time shall be counted as an acquisition period.

A future period of insurance shall not be included in the calculation when an invalidity benefit is granted under the third paragraph of Section 12-2.

If the period of insurance is set under the second sentence of the third paragraph, it shall be set again when a new onset of invalidity is set with a higher degree of invalidity under the second paragraph of Section 12-8.

When the total period of insurance amounts to at least five years, it shall be rounded off to the nearest full year.

29 Section 12-13 NIA entitled “Amount of invalidity benefits” reads:

Invalidity benefits shall be paid at a rate of 66 per cent of the basis under Section 12-11.

The minimum annual benefit is 2.28 times the basic amount (ordinary rate) for persons who reside together with a spouse (see Section 1-5) or with a cohabitant in a cohabitation arrangement that has existed for at least 12 of the last 18 months. The minimum annual benefit is nevertheless 2.33 times

the basic amount if the person concerned receives an invalidity benefit which is a recalculated invalidity pension. For others, the minimum annual benefit is 2.48 times the basic amount (high rate).

For a member who became disabled prior to turning 26 years of age due to serious and permanent illness, injury or defect which is clearly documented, the minimum benefits as referred to in the second paragraph are 2.66 and 2.91 times the basic amount, respectively. This applies even though a member has been more than 50 per cent occupationally active after turning 26 years of age, if it is clearly documented that the conditions in the first sentence were fulfilled before the person turned 26 years of age and the claim is submitted before the person turns 36 years of age. The provision in the first sentence also applies when invalidity benefits are granted again after the benefit is lost due to income-testing under Section 12-14. The minimum benefit under the present paragraph shall be paid at the earliest from and including the month in which the member turns 20 years of age.

When the period of insurance under Section 12-12 is under 40 years, the invalidity benefit shall be reduced accordingly.

If the degree of invalidity under Section 12-10 is lower than 100 per cent, the invalidity benefit shall be fixed as a proportionate share of the amount under the first to fourth paragraphs.

30 Chapter 23 NIA provides that the financing of the national insurance scheme is based primarily on three sources: (1) contributions by the members of the national insurance scheme in the form of social security contributions which are levied on the basis of wages, self-employment income and pensions, (2) employers' contributions paid by employers on the basis of paid benefits subject to withholding tax, and (3) contributions from the State. According to the National Insurance Court, there is no direct connection between revenue and expenditure in the national insurance scheme. The difference between revenue and expenditure in the national insurance scheme is covered through the determination of the annual State contribution to the national insurance scheme.

31 The Norwegian Regulation on calculation of invalidity benefits pursuant to the EEA Agreement (*forskrift 12. februar 2015 nr. 130 om beregning av uføretrygd etter EØS-avtalen*) ("the Calculation Regulation") contains rules on the calculation of invalidity benefits from the national insurance scheme pursuant to Article 52(1)(b) of Regulation 883/2004.

32 Section 1 of the Calculation Regulation, entitled "Scope", reads:

This regulation contains provisions on the calculation of invalidity benefits from the national insurance scheme according to Regulation (EC) No 883/2004 Article 52(1)(b) for persons covered by the EEA Agreement Annex VI No 1 and 2 (Regulation of the European Parliament and of the Council (EC) No 883/2004 on the coordination of social security systems and

Regulation of the European Parliament and of the Council (EC) No 987/2009 on rules for the implementation of Regulation (EC) No 883/2004 – etc.). The provisions apply correspondingly in cases where similar rules are applied pursuant to a social security agreement Norway has with another country.

33 Section 3 of the Calculation Regulation, entitled "Minimum annual benefit", reads:

Invalidity benefits shall be paid at a rate of 66 per cent of the basis under Section 2. The minimum annual benefit follows from Section 12-13 of the National Insurance Act.

The invalidity benefit shall be reduced under Section 4 and Section 5.

34 Section 4 of the Calculation Regulation, entitled "Theoretical amount", reads:

The theoretical amount for the invalidity benefit in the event of full invalidity shall be equal to 66 per cent of the basis for the invalidity benefit, see Section 2, multiplied by a fraction where the theoretical period of insurance is the numerator and 40 is the denominator.

If the person concerned is entitled to a minimum annual benefit under the second and third paragraphs of Section 12-13 of the National Insurance Act, the theoretical amount for the invalidity benefit in the event of full invalidity shall be equal to the minimum annual benefit, multiplied by a fraction where the theoretical period of insurance is the numerator and 40 is the denominator.

Theoretical period of insurance refers to the period of insurance determined under Section 12-12 of the National Insurance Act, but nevertheless in such a way that insured periods in other EEA States are equated with periods of insurance under the second paragraph of Section 12-12 of the National Insurance Act.

35 Section 5 of the Calculation Regulation, entitled "Actual amount", reads:

The actual amount of the invalidity benefit is determined by the theoretical amount under Section 4 being multiplied by a fraction in which periods of insurance in Norway prior to the onset of invalidity determined in the number of months are the numerator, and the total of the periods of insurance in Norway and insured periods in other EEA States prior to the onset of invalidity determined in the number of months are the denominator.

The period of insurance is limited to periods of time that can count as periods of insurance under the second paragraph of Section 12-12 of the National Insurance Act. The period of insurance may not amount to more than 480 months as numerator or denominator.

If the degree of invalidity is lower than 100 per cent, the invalidity benefit shall be fixed as a proportionate share of the amount under the first paragraph.

36 Chapter 3.8 of Circular R45-00 issued by the Norwegian Labour and Welfare Administration (“NAV”) concerning the relationship between the minimum benefits provided for in the second paragraph of Section 12-13 NIA (and minimum old-age pension level provided for in Section 19-8 NIA) and Article 58 of Regulation 883/2004 states:

3.8 Guarantee supplement when the total pension is lower than the minimum pension in the country where the pensioner is residing

The provision is found in Article 58 of Regulation 883/2004. It shall no longer be applied by Norway.

NAV has previously applied that provision in such a way that a guarantee supplement to pension from the national insurance scheme was paid to persons residing in Norway and having pension from Norway and another EEA State. The guarantee consisted in ensuring a total benefit corresponding to a minimum pension from the national insurance scheme or minimum pension level for old-age pension when turning 67 years of age, calculated according to a total period of insurance in EEA States which paid a pension. The guarantee supplement to flexible old-age pension was paid at the earliest once the person drew a full old-age pension upon turning 67 years of age. A deduction was made from the minimum pension level when the person turned 67 years of age if the person concerned had drawn an old-age pension before turning 67 years of age.

The Ministry of Labour and Social Affairs examined the question of whether Norway shall once again pay a guarantee supplement, and concluded that Norway shall not pay such a supplement. Accordingly, a guarantee supplement shall no longer be paid by Norway. The decisions on guarantee supplement are regarded as being invalid decisions under letter (c) of the first paragraph of Section 35 of the Public Administration Act (forvaltningsloven), and all guarantee supplements currently being paid shall lapse by 1 September 2014.

In a letter of 25 June 2013 to the Labour and Welfare Directorate, the Ministry wrote inter alia the following:

‘Following a re-examination of the matter, it seems clear that Norway has at no time been under any obligation to pay the guarantee supplements in question. Although the previous Norwegian interpretation of the relevant provisions in the regulation entails that the guarantee supplements functions as a logical supplement to the other pension rules in the EEA, our interpretation of the provisions has nevertheless not been correct. The

> *schemes referred to in the provisions of the regulation are schemes under which there is payment of a supplement to benefits fixed under the usual rules on periods of insurance and income-based pensions when those benefits do not reach a determined minimum level. The National Insurance Act contains no such rules. Supplementary benefits for elderly persons with brief periods of residence may in and of themselves be considered to be such a scheme, but that benefit scheme has its own place in the EEA system.*
>
> *The previous interpretation of the articles on guarantee supplement meant that the guarantee level was set to a minimum pension, calculated according to the rules for the theoretical amount for the EEA calculation of pensions. Case law from the European Court of Justice ("ECJ") shows, however, that the provisions on guarantee supplement do not concern such a scheme. This is particularly clear from the judgment in Case C-22/81.'*

37 According to the National Insurance Court, both it and Hålogaland Court of Appeal (*Hålogaland lagmannsrett*) have previously upheld the change of practice.

II Facts and procedure

38 A is a Norwegian national. He was born in 1966 and resides in Norway. A was resident in Ireland from May 2006 until February 2014. In May 2018, A submitted a claim for invalidity benefits to NAV. It followed from the medical certificate accompanying the claim that he suffered from a serious long-term mental illness. By decision of 25 January 2019, A's claim was granted with a degree of invalidity of 80 per cent. The onset of invalidity – i.e. when A's earning capacity was permanently reduced by at least half – was set to April 2014.

39 According to the National Insurance Court, information provided by Irish social security authorities indicates that A has not been a member of the Irish national insurance scheme since December 2012. A therefore did not fulfil the principal requirement under the first paragraph of Section 12-2 NIA of five years' prior membership before the onset of invalidity. However, the NAV Employment and Benefits Office (*NAV Arbeid og ytelser*) found that the exception in the third paragraph of Section 12-2 NIA applied, since A was a member of the national insurance scheme at the time of the onset of invalidity and had acquired entitlement to at least half of the full minimum invalidity benefit. The invalidity benefit was calculated according to the NIA rules, since, according to the National Insurance Court, that gave the highest benefit.

40 A appealed against that decision, arguing that his degree of invalidity should be set at 100 per cent. A argued that although he ran a small computer service business, that was almost as a hobby and that his ability to work was highly unpredictable. The income from the business varied and had declined in recent years. On 15 November 2019, NAV Appeals (*NAV Klageinstans*) upheld the original decision.

41 On 25 November 2019, A appealed that decision to the National Insurance Court. Before the National Insurance Court, A has maintained that his invalidity should be set at 100 per cent. He has also argued that he is entitled to be paid a guarantee supplement/additional benefit pursuant to Article 58 of Regulation 883/2004, since the total of his *pro rata* benefits is lower than the minimum benefit under the second paragraph of Section 12-13 NIA.

42 A also applied for invalidity benefits in Ireland. According to the National Insurance Court, by decision of 21 August 2019, A's claim was rejected by the Irish social security authorities on the basis that "…you do not satisfy the conditions for receipt of Invalidity Pension. Having examined all of the documents provided in support of your claim it has been decided that you are not permanently incapable of work. According to information supplied, you are currently self-employed as Computer Engineer." A thus receives only a *pro rata* benefit from Norway.

43 By decision of 10 August 2020, NAV Appeals referred the part of the case relating to prior membership back to the NAV Employment and Benefits Office for reassessment.

44 On 19 August 2020, the NAV Employment and Benefits Office adopted a new decision in respect of A. It amended the calculation of the invalidity benefit so that A received a higher invalidity benefit. In the decision it was held that A satisfied the condition for the exception in letter (b) of the second paragraph of Section 12-2 NIA through aggregation of Norwegian and Irish periods of insurance. Consequently, the Norwegian invalidity benefit was calculated on a *pro rata* basis pursuant to Article 52(1)(b) of Regulation 883/2004 and the Calculation Regulation.

45 According to the National Insurance Court, this was done, first, by calculating a theoretical amount equal to the benefit to which A would have been entitled had all periods of insurance been completed in Norway. Then an actual amount was determined based on the theoretical amount, on the basis of the ratio between the completed periods of insurance in Norway before the incident (the onset of invalidity) and the combined completed periods of insurance in Norway and Ireland before the incident. Since A had low income in the last five calendar years preceding the onset of invalidity, the theoretical amount was calculated on the basis of the minimum benefit in the second paragraph of Section 12-13 NIA. Furthermore, A's total periods of insurance in Norway and Ireland, including future periods of insurance, were set to a maximum of 40 years. Based on the basic amount, upon which Norwegian social security calculates benefits (*grunnbeløpet*), as at 1 May 2022 (NOK 111 477) and an 80 per cent degree of invalidity, this gave the following calculation:

Theoretical amount: NOK 111 477 x 2.48 x 40/40 x 80% = NOK 221 170

46 The actual amount was calculated, based on 283 months of periods of insurance in Norway before the onset of invalidity and 59 months in Ireland, as follows:

Actual amount: NOK 221 170 x 283/342 = NOK 183 015 (NOK 15 251 per month).

47 According to the National Insurance Court, the current minimum annual benefit for single persons is 2.48 x NOK 111 477 = NOK 276 463 based on 40 years of periods of insurance. When adjusted for an 80 per cent degree of invalidity, this is NOK 221 170.

48 In the proceedings before the National Insurance Court, A argues that his annual invalidity benefit should be fixed at this higher rate, with reference to Article 58 of Regulation 883/2004. In his view, the "minimum annual benefit" referred to in the second paragraph of Section 12-13 NIA constitutes a "minimum benefit" for the purposes of Article 58 of Regulation 883/2004 since it is designed to guarantee a recipient of invalidity benefits a minimum financial standard. He should therefore be entitled to that higher rate, regardless of where in the EEA his periods of insurance were completed. Consequently, A contends that his annual invalidity benefit ought to be adjusted from NOK 183 015 to NOK 221 170.

49 NAV maintains that the "minimum annual benefit" referred to in the second paragraph of Section 12-13 NIA does not constitute an express guarantee of a minimum benefit, but rather forms part of the usual social security rules, with benefits based on acquisition via periods of insurance. As such, it cannot be "transformed" into a minimum benefit within the meaning of Article 58 of Regulation 883/2004.

50 In light of these arguments, the National Insurance Court decided that it was necessary to refer the matter to the Court. By letter of 16 May 2023, registered at the Court on 23 May 2023, the National Insurance Court referred the following question to the Court:

> *Is there a minimum benefit within the meaning of Article 58 of Regulation (EC) No 883/2004 where the national legislation contains provisions on a minimum annual benefit in the event of invalidity, but at the same time provides that that benefit is to be proportionally reduced when the person has a shorter period of insurance than the full period of insurance, which is 40 years?*

51 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

III Answer of the Court

52 The referring court seeks guidance on the interpretation of Article 58 of the Regulation in order to establish whether the benefit in the second paragraph of Section 12-13 NIA constitutes a minimum benefit within the meaning of Article 58. The referring court, in particular, queries the significance of the fact that, in the second paragraph of Section 12-13 NIA, the benefit is expressed in specific amounts that are to be proportionally reduced in the event of a period of insurance shorter than 40 years, in line with the fourth paragraph of Section 12-13 NIA. According to the referring court, this reduction is the only variable factor that affects the amount of the benefit of the national legislation applicable in the main proceedings.

53 In order to provide a useful answer to the referring court, it should be noted that the purpose of Regulation 883/2004 is to coordinate the social security systems of EEA States in order to guarantee that the right to free movement of persons can be exercised effectively. That regulation modernised and simplified the rules contained in Council Regulation (EEC) No 1408/71 (OJ English Special Edition 1971(II), p. 416), while retaining the same objective as the latter (see Case E-13/20 *O* v *Arbeids- og velferdsdirektoratet*, judgment of 30 June 2021, paragraph 38 and case law cited). Accordingly, the case law relating to Regulation 1408/71 may be relevant for the interpretation of Regulation 883/2004.

54 According to Article 29(a) EEA, in order to provide freedom of movement for workers and self-employed persons, EEA States shall, in the field of social security, secure, in particular, aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of EEA States. The objective of Article 29 EEA is to contribute to the establishment of the greatest possible freedom of movement. It is settled case law that the provisions of Regulation 883/2004, which has been adopted to give effect to Article 29 EEA, must be interpreted in light of that objective (see Case E-8/20 *Criminal Proceedings against N*, judgment of 5 May 2021, paragraph 46 and case law cited). As also stated in recital 1 of the Regulation, the rules for coordination of national social security systems fall within the framework of free movement of persons and should contribute towards improving their standard of living and conditions of employment.

55 The Court notes that Article 29 EEA provides for coordination, rather than harmonisation, of domestic legislation in this area. Thus, EEA law does not detract from the power of the EEA States to organise their social security systems. In the absence of harmonisation at EEA level, it is for the legislature of each EEA State to determine the conditions on which social security benefits are granted. Nevertheless, when exercising that power, the EEA States must comply with EEA law (see *O* v *Arbeids- og velferdsdirektoratet*, cited above, paragraph 39 and case law cited).

56 The objective pursued by Article 29 EEA entails that migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised their right to free movement (see Case E-5/21 *Einarsdóttir*, judgment of 29 July 2022, paragraph 31 and case law cited). The Regulation seeks to prevent a worker who, having exercised his or her right of free movement, has worked in more than one EEA State from being treated less favourably than a worker who has worked in only one EEA State, without objective justification. The right to free movement of persons would be impeded if an EEA national were to be placed at a disadvantage in his or her State of origin solely for having exercised that right (see *Einarsdóttir*, cited above, paragraph 30 and case law cited). This is also reflected in recitals 4 and 5 of the Regulation which state that, while it is necessary to respect the special characteristics of national social security legislation and draw up only a system of coordination, at the same time equality of treatment under the different national legislation for the persons concerned must be guaranteed.

57 The personal scope of the Regulation, as defined in its Article 2(1), covers nationals of an EEA State who are or have been subject to the legislation of one or more EEA States. According to Article 3(1)(c), its material scope includes legislation concerning invalidity benefits. Articles 4 to 6 lay down key principles of equality of treatment and aggregation of periods.

58 Article 44 of the Regulation provides that the legislation applying to invalidity benefits is defined as either “type A legislation”, i.e. legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance or residence and which is expressly included by the competent EEA State in Annex VI to the Regulation, or is otherwise “type B legislation”.

59 It appears from the request that, according to the Norwegian rules on invalidity benefits, the amount of invalidity benefits is not independent of the duration of the periods of insurance and that the Norwegian legislation at issue in the main proceedings thus falls within the category of “type B legislation”. It follows from Article 46(1) of the Regulation that a person who has been successively or alternately subject to the legislation of two or more EEA States, of which at least one is not “type A legislation”, shall be entitled to benefits under Chapter 5, which shall apply *mutatis mutandis*.

60 Article 58(1) of the Regulation, which replaced Article 50 of Regulation 1408/71 without substantive amendment, establishes, in essence, that a recipient of benefits to whom Chapter 5 applies may not be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with Chapter 5. Article 58(2) of the Regulation provides for a supplement to be paid equal to the difference between the total of the benefits due under Chapter 5 and the amount of the minimum benefit. While Article 58 does not require EEA States to establish a minimum benefit (compare the judgment in *Zaniewicz-Dybeck*, C-189/16, EU:C:2017:946, paragraph 47), it provides that if a minimum benefit exists in the national legislation, the mechanism set out in Article 58 must be observed.

61 The interpretation of Article 58 of the Regulation must have regard to its context, such as the Regulation’s other provisions concerning the calculation of benefits due under Chapter 5. In Chapter 5 the award of benefits is calculated primarily according to Article 52 of the Regulation.

62 Article 52(1) of the Regulation provides that the competent institution shall calculate the amount of the benefit that would be due (a) under the legislation it applies, only where the conditions for entitlement to benefits have been satisfied exclusively under national law (independent benefit), and (b) by calculating a theoretical amount and subsequently an actual amount (pro rata benefit).

63 It is apparent from the wording of Article 52(1)(b) of the Regulation that the amount of the benefit is calculated in two stages, first by calculating a theoretical amount and subsequently an actual amount. As regards the first stage, referred to in Article 52(1)(b)(i), the competent institution is required to calculate the theoretical amount of

the benefit which the insured person could claim if all the periods of insurance and/or of residence completed under the legislation of other EEA States had been completed under the legislation which it applies. In accordance with that provision, the theoretical amount of the benefit must therefore be calculated as if the insured person had worked exclusively in the EEA State concerned. This calculation is intended to give a worker the maximum theoretical amount which they could claim if all their periods of insurance had been completed under the legislation of the EEA State in question (compare the judgment in *Zakład Ubezpieczeń Społecznych I Oddział w Warszawie*, C-866/19, EU:C:2021:865, paragraphs 34, 35, 36 and 38 and case law cited).

64 In this respect, it should be noted that where the legislation of an EEA State adds a supplementary national period to the periods of insurance completed before the risk materialised in order to evaluate the benefit awarded in the event of the premature invalidity or the premature death of an insured person, such periods must be taken into account in the calculation of the theoretical amount referred to in Article 52(1)(b)(i) of the Regulation (compare the judgment in *Barreira Pérez*, C-347/00, EU:C:2002:560, paragraph 32 and case law cited).

65 At the second stage, referred to in Article 52(1)(b)(ii) of the Regulation, the competent institution is to determine the actual amount of the benefit on the basis of the theoretical amount, in accordance with the ratio of the duration of the periods of insurance and/or of residence completed under the legislation it applies, to the total duration of the periods of insurance and/or of residence completed under the legislations of all the EEA States concerned (compare the judgment in *Zakład Ubezpieczeń Społecznych I Oddział w Warszawie*, cited above, paragraph 40 and case law cited).

66 In this respect, it may also be necessary to take account of Article 50(2) of the Regulation, which provides that if, at a given moment, the person concerned does not satisfy, or no longer satisfies, the conditions laid down by all the legislation of the EEA States to which he/she has been subject, the institutions applying legislation the conditions of which have been satisfied shall not take into account, when performing the calculation in accordance with Article 52(1)(a) or (b), the periods completed under the legislation the conditions of which have not been satisfied, or are no longer satisfied, where this gives rise to a lower amount of benefit.

67 Only after a calculation in accordance with Article 52(1) of the Regulation has been completed, does Article 58 apply, according to which the recipient may not be provided with a benefit which is less than a minimum benefit fixed by the applicable national legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with Chapter 5 of Title III of the Regulation.

68 Pursuant to settled case law, there is a minimum benefit within the meaning of Article 58 of the Regulation where the legislation of the EEA State of residence includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions. Article 58 covers cases, inter alia, where the periods of employment of the worker under the

legislation of the EEA States to which he was subject were relatively short, with the result that the total amount of benefits payable by those EEA States does not provide a reasonable standard of living (compare the judgments in *Torri*, 64/77, EU:C:1977:197, paragraph 5; *Browning*, 22/81, EU:C:1981:316, paragraphs 11 and 12, and *Zaniewicz-*, cited above, paragraphs 45 and 57 and case law cited). In this respect, the Court observes that it is not necessary that a minimum benefit actually provides a reasonable standard of living, it is sufficient that it is intended to do so. Therefore, regard must be had to the purpose of the benefit at issue.

69 The question referred to the Court concerns, in essence, whether the mere potential for a reduction of the amount of benefit based on insurance periods precludes it from constituting a minimum benefit within the meaning of Article 58 of the Regulation.

70 The Court observes that the wording of Article 58(1) of the Regulation explicitly refers to a minimum benefit fixed by the applicable legislation for a period of insurance or residence equal to "all the periods taken into account for the payment" in accordance with Chapter 5 of Title III of the Regulation. Thus, Article 58(1) gives effect to the principle of aggregation in the particular context of minimum benefits. The reference to "all the periods taken into account" in that provision, must be understood as referring to all the periods taken into account under Article 52, including any supplementary national periods added to the periods of insurance completed before the risk materialised in the calculation of the theoretical amount referred to in Article 52(1)(b)(i) in accordance with the case law recalled above.

71 That interpretation, which follows directly from the wording of Article 58(1) of the Regulation, is consistent with both the objective of Article 29 EEA and its context, in particular, the principle of aggregation laid down therein. Any other interpretation would be liable to impede the right to free movement of persons by placing them at a disadvantage in their State of origin solely for having exercised that right. This would be contrary to the aim of the Regulation, which seeks to prevent a worker who, having exercised their right of free movement, has worked in more than one EEA State from being treated less favourably than a worker who has worked in only one EEA State, without objective justification.

72 The purpose of Article 58 of the Regulation is twofold: first, to ensure that all the periods of insurance which are taken into account for the purpose of calculating the payment to be made under Articles 50 to 57 of Chapter 5 can be relied on, in the State of residence, to establish a qualification for minimum benefit; and second, to ensure that the individual does not lose the advantage of the minimum benefit merely by the application of those provisions of Chapter 5 which precede Article 58 (compare the Opinion of Advocate General Slynn in *Browning*, 22/81, EU:C:1981:277, p. 3377).

73 The Court notes that Article 58 of the Regulation applies to minimum benefits provided by national legislation for a given period of insurance or residence. Hence, a minimum benefit, within the meaning of Article 58, does not need to be a fixed or specified amount. It may be calculated by applying increases and reductions designed to take into account, inter alia, the personal circumstances of the person concerned (compare the

judgment in *Zaniewicz-Dybeck*, cited above, paragraph 51, and the Opinion of Advocate General Wathelet in *Zaniewicz-Dybeck*, C-189/16, EU:C:2017:329, point 36). The amount of such a minimum benefit may also depend on the length of insurance periods taken into account.

74 Accordingly, the purpose of the reference period expressly defined in Article 58 of the Regulation, read in light of its context and purpose, is essentially to address a situation where, under the legislation of an EEA State, the amount of the minimum benefit varies according to the period of insurance or residence completed. If the legislation of the EEA State of residence includes a specific guarantee of a minimum income for the period of insurance or residence with a variable factor relating to the length of such periods, which must be aggregated with such periods completed under the legislation of other EEA States, there is a minimum benefit within the meaning of Article 58. The mere fact that a national benefit may be increased or reduced according to periods of insurance or residence, is therefore without significance as to whether that benefit constitutes a minimum benefit within the meaning of Article 58.

75 Therefore, the argument of the Norwegian Government that a benefit, such as the one at issue in the main proceedings, does not constitute a minimum benefit, within the meaning of Article 58 of the Regulation, since the amount of that benefit may be subject to reduction based on the periods of insurance must be rejected.

76 To exclude a national benefit that provides a specified amount for relevant periods of insurance and/or residence from the scope of Article 58 of the Regulation merely because the amount depends on those periods would also be at variance with the object and purpose of Article 29 EEA. This is so, in particular, in circumstances such as those of the main proceedings, where it appears from the information contained in the request that individuals who have only resided in Norway would always reach the full period of insurance, which is 40 years, for the purposes of calculating the benefit at issue. In such a situation, according significance to the proportional reduction, with the consequence that a national benefit would not come within the scope of Article 58, would have the effect that periods completed under the legislation of other EEA States would not be taken into account, in the State of residence, for establishing a qualification for minimum benefit and as such be liable to impede the right to free movement of persons by placing them at a disadvantage in their State of origin solely for having exercised that right.

77 It is for the referring court to determine in accordance with the interpretation set out above whether the benefit at issue constitutes a minimum benefit within the meaning of Article 58 of the Regulation.

78 In the light of the foregoing, the answer to the question referred must be that there is a minimum benefit within the meaning of Article 58 of the Regulation where the national legislation of an EEA State includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions. To the extent that national legislation provides for such a

specific guarantee it is without significance for the qualification as a minimum benefit within the meaning of Article 58 of the Regulation that the benefit may be proportionally reduced when the insured person has a shorter period of insurance than the full period of insurance, which under national law is 40 years.

IV Costs

79 Since these proceedings are a step in the proceedings pending before the National Insurance Court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the question referred to it by the National Insurance Court hereby gives the following Advisory Opinion:

There is a minimum benefit within the meaning of Article 58 of Regulation (EC) No 883/2004 where the national legislation of an EEA State includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions. To the extent that national legislation provides for such a specific guarantee it is without significance for the qualification as a minimum benefit within the meaning of Article 58 of the Regulation that the benefit may be proportionally reduced when the insured person has a shorter period of insurance than the full period of insurance, which under national law is 40 years.

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 18 April 2024.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President