OPINION OF ADVOCATE GENERAL ALBER

delivered on 29 June 2000 [1]

I — Introduction

1. In each of the main actions (which have been pending since 1987) the dispute initially related to the amount of the pensions in issue on account of reduction clauses in the form of national rules preventing overlapping. However, Article 46 of Regulation No 1408/71, [2] which is relevant to the case in this regard, was amended by Regulation No 1248/92, [3] which entered into force on 1 June 1992, with the result that the parties now assume, according to the order for reference, that the plaintiffs have a right to a pension without reduction. However, the primary point of dispute is now the date from which the plaintiffs have enjoyed that right, because this may depend on the date on which the application was made. The referring court asks whether such an application for an increased pension may be made only by recipients of pensions where the decision granting the pension was final at the time of the entry into force of the amendment introduced in 1992 or also by those who had already brought proceedings prior to the change in the legal situation.

2. The present case concerns the interpretation and application of the transitional provisions laid down in Article 95a of Regulation (EEC) No 1408/71 — as amended by Regulation (EEC) No 1248/92 — on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. [4]

II — Legal framework

3. The transitional rule contained in Article 95a of Regulation No 1408/71 reads as follows:

'1. Under Regulation (EEC) No 1248/92 no right shall be acquired for a period prior to 1 June 1992.

1 — Original language: German.

2 — Consolidated version of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1992 C 325, p. 1).

3 — OJ 1992 L 136, p. 7.

4 — Regulation (EEC) No 1408/71 of the Council of 14 June 1971, as amended by Council Regulation No 1248/92 of 30 April 1992, consolidated version of the regulation (OJ 1992 C 325, p. 1).

2. All insurance periods or periods of residence completed under the legislation of a Member State before 1 June 1992 shall be taken into consideration for the determination of rights to benefits pursuant to Regulation (EEC) No 1248/92.

3. Subject to paragraph 1, a right shall be acquired under Regulation (EEC) No 1248/92 even though relating to a contingency which materialised prior to 1 June 1992.

4. The rights of a person to whom a pension was awarded prior to 1 June 1992 may, on the application of the person concerned, be reviewed, taking into account the provisions of Regulation (EEC) No 1248/92.

5. If an application referred to in paragraph 4 is submitted within two years from 1 June 1992 the rights acquired under Regulation (EEC) No 1248/92 shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.

6. If the application referred to in paragraph 4 is submitted after the expiry of the two-year period after 1 June 1992, rights which have not been forfeited or not barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply.'

III — Facts

(1) *Case C-52/99 (Camarotto)*

4. In 1984 Mr Sutto — the husband, who died in 1994, of Mrs Camarotto, who has succeeded him as a party to the proceedings — was notified of a decision granting a Belgian old-age pension on the pro rata basis of a period of insurance of 37/45. Mr Sutto objected to that decision and claimed a Belgian pension of 42/45 with no reduction. He was successful at first instance. The Office National des Pensions (National Pension Office), the defendant and appellant in the main proceedings (hereinafter 'the ONP'), lodged an appeal. The proceedings, which primarily concerned the application of national rules against overlapping, were stayed pending the outcome of other test cases. The proceedings were resumed on 5 January 1996.

5. In the main proceedings, the question now arises whether, as a result of the change in the legal situation which occurred in 1992, the substantive provisions of Regulation No 1248/92 may be applicable for the period after 1 June 1992, whether this might be dependent on the need to submit an application, and if so, in what form (Article 95a(4)), and whether the effects of such an application are *ex tunc* (Article 95a(5)) or *ex nunc* (Article 95a(6)).

6. An application was in fact submitted, although it was not received by the ONP until 12 November 1997, with the result that the ONP is prepared to grant the increase in the pension which has occurred only as from 1 December 1997.

7. Lastly, there is a letter from the ONP, dated 22 September 1994, which was sent to its own legal representative, but which was also received via an indirect route by the pension claimant, in which the pension was calculated on the basis of the rules applicable from 1 June 1992. The increased pension thus calculated was not paid out, however, since the ONP took the view that an application was required for that purpose. However, the plaintiff and respondent was not made aware of that requirement by the ONP. She objects that she was misled by the letter.

(2) *Case C-53/99 (Vignone)*

8. The subject-matter and procedure in Case C-53/99 differ only slightly from those in Case C-52/99. In 1987 Mrs Vignone, the widow of Mr Tammaro, was notified of a decision granting a Belgian survivor's pension on the basis of a period of insurance of 27/30. Mrs Vignone appealed against that decision, claiming a Belgian pension of 30/30 with no reduction. The subsequent judicial procedure followed the same course as in Case C-52/99. The application submitted by the party concerned for the grant of an increased pension was received by the ONP on 13 November 1997. In the case of Mrs Vignone too, there is a letter from the ONP of 22 September 1994 with a calculation of the pension based on the rules applicable from 1 June 1992.

IV — The questions referred for a preliminary ruling and procedure

9. In each case the national court referred identical questions to the Court of Justice:

'1. Does Article 95a of Regulation No 1408/71, as amended by Regulation No 1248/92, laying down transitional provisions for application of Regulation No 1248/92, refer solely

to recipients of pensions where the decision granting the pension was final at the time of the entry into force of the amendment, or does it relate also to recipients of pensions who before the entry into force of the amendments introduced by the new regulation had already brought proceedings before a national court seeking to obtain precisely the right to the pension by contesting the application of the national rules against overlapping, a final decision in those proceedings not yet having been given at the time of the entry into force of the new provisions?

2. If Article 95a applies to all recipients without distinction, must the application referred to in Article 95a(4) be made to the competent social security institution in accordance with the formalities required by national legislation for the bringing of an application for review, or may it be made to the court before which the dispute has been brought in accordance with the applicable rules of procedure, and in the latter case must the period of two years referred to in Article 95a(5) and (6) likewise be complied with?'

10. The ONP, the plaintiffs and respondents in the main proceedings and the Commission took part in the procedure. Reference will be made to the arguments of the parties below.

11. The Court of Justice addressed a question to the parties in advance regarding the significance of the letter of 22 September 1994, which was to be answered at the hearing.

V — Arguments of the parties

(1) *The ONP*

12. The ONP proceeds from the assumption that the Court has established in its case-law [5] the principle that the most favourable regime in a particular case — either the internal national or the Community regime — must be applied. A significant change occurred as a result of Regulation No 1248/92, inasmuch as the internal rules against overlapping are no longer applicable. However, the regulation, which entered into force on 1 June 1992, does not establish any rights in respect of periods prior to that date. In addition, under Article 95a(4), (5) and (6), a pension may be reviewed only on an application by the

5 — See Case 24/75 *Petroni* v *ONPTS* [1975] ECR 1149, Case 236/78 *Mura* [1979] ECR 1819, Case 58/84 *ONPTS* v *Romano* [1985] ECR 1679, Case 117/84 *ONPTS* v *Ruzzu* [1985] ECR 1697, Case 296/84 *Sinatra* v *FNROM* [1986] ECR 1047, Case 37/86 *Van Gastel* v *Rijksdienst and Rijkskas* [1987] ECR 3589, Case 323/86 *Collini* v *ONPTS* [1987] ECR 5489, Case 128/88 *Di Felice* v *INASTI* [1989] ECR 923, Case C-199/88 *Cabras* v *INAMI* [1990] ECR I-1023, Case C-108/89 *Pian* v *Office National des Pensions* [1990] ECR I-1599, Case C-109/89 *Office National des Pensions* v *Bianchin* [1990] ECR I-1619 and Joined Cases C-90/91 and C-91/91 *Office National des Pensions* v *Di Crescenzo and Casagrande* [1992] ECR I-3851.

person entitled to make the claim. The legal criterion is therefore the 'award'[6] of the pension, which means the process of making the pension payable — that is to say the calculation of the amount to be paid and the payment itself — irrespective of whether or not the administrative act awarding it is final.

13. It is indisputable that any payable pension can be the subject of a review only if an application is submitted. The form of that application may be either administrative or judicial. An application to a court may be in the form of a statement of claim, a pleading or a motion. In any case, however, the acquisition of rights depends on the date on which the application is submitted. An *ex officio* review is not only contrary to the wording of the provision; a review can also result in a reduction of the pension, particularly in the case of survivor's pensions. The need for an application to be submitted in strict compliance with the prescribed time-limits is therefore a mandatory requirement for the purposes of ensuring legal certainty. It follows that a review can be conducted only if an application is submitted. Furthermore, the letter of 22 September 1994 cannot have any legally binding effect. The review of the pension was effected purely for information purposes and was sent to the ONP's own legal representative.

6 — The French text of Article 95a(4) of the regulation refers to 'la liquidation d'une pension', whilst the German text reads 'feststellen der Rente' and the English text states 'a pension was awarded'.

(2) *The plaintiffs and respondents*

14. The plaintiffs and respondents argue that, in order to answer the questions referred for a preliminary ruling, consideration must be given both to Community law and to national law.

15. At the time of entry into force of Regulation No 1248/92 legal proceedings were pending in both cases, with the result that the contested pension decisions were not final. In its judgment replacing the administrative act, the national court should take account of all amendments to the rules which gave rise to the dispute. In so far as Article 95a(6) provides that, if an application is submitted after the expiry of the two-year period after 1 June 1992, rights are to have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any Member State apply, reference should be made to Articles 807 and 808 of the Belgian Judicial Code (Code Judiciaire Belge, contained in the Law of 10 October 1967). Those provisions permit the parties to supplement or amend their submissions at any time throughout the judicial procedure. The Belgian court is therefore required, if so requested by the parties, to apply the rules which entered into force on 1 June 1992.

16. In the present case the parties did submit the necessary application, although

not within the two-year period.[7] In the context of the applicability of Articles 807 and 808, the court may attach retroactive effect to that application. Articles 807 and 808 of the Judicial Code have moreover been the subject of several judgments by the Cour de Cassation. In a judgment of 22 May 1978, the Cour de Cassation found as follows: In a legal dispute concerning rights based on law, the court hearing the case may not only decide on rights existing at the time when the application was submitted, but may also take into consideration circumstances arising after the contested administrative decision, if they are capable of increasing the rights of the insured person.[8]

17. In the present case, having regard to Article 95a(4), it should also be observed that, since proceedings are pending before a court, reference should be made, strictly speaking, not to a 'review' (révision de droits), but to a 'determination of rights' (fixation de droits). The preclusive period does not therefore come into play.

18. As regards the temporal effect of the new rules of Community law, it follows from the case-law of the Court, that

— it is for the national legal order of each Member State to lay down the procedural rules governing actions designed to ensure the protection of the rights which individuals acquire through the direct effect of Community law, provided that such rules are not less favourable than those governing similar domestic actions and are not framed in such a way as to render impossible in practice the exercise of rights conferred by Community law;[9]

— Community law precludes the application of a national rule under which the retroactive effect of a claim based on Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) is limited to two years;[10]

— new rules or the effects of an interpretative judgment delivered by the Court may in any case be relied upon retroactively by persons who have brought actions or lodged a similar complaint.[11]

7 — For the date on which the applications were submitted, see points 6 and 8.

8 — Reported in *Journal des Tribunaux du Travail* of 31 October 1981, No 230, p. 292, point 46.

9 — Case C-246/96 *Magorrian and Cunningham* v *EHSSB and DHSS* [1997] ECR I-7153, paragraph 37.

10 — Case C-246/96 *Magorrian and Cunningham* (cited in footnote 9).

11 — Case 309/85 *Barra* v *Belgian State* [1988] ECR 355 and Case 24/86 *Blaizot* v *Université de Liège and Others* [1988] ECR 379.

19. It is proposed by the plaintiffs and respondents that the following answer be given to the request for a preliminary ruling:

Article 95a of Regulation No 1408/71 must be interpreted as meaning that the two-year period referred to in Article 95a(5) is not applicable in the case of persons who have brought proceedings and who are able, on the basis of the national legal order, to claim the retroactive applicability to 1 June 1992 of the rules of Regulation No 1248/92 which are favourable to them.

(3) *Commission*

20. In the view of the Commission, the present case is covered by Article 95a(4). That provision affords a right of review to all those to whom a pension award decision is addressed under Regulation No 1408/71 prior to its amendment by Regulation No 1248/92, including those who had already brought proceedings prior to the entry into force of the amending regulation.

21. Since the provisions do not lay down any procedural rules for the application for review, it is for the national legislature to lay down the procedural measures for the exercise of the right. This must clearly be done without rendering the exercise of the rights impossible in practice or excessively difficult. Thus, the Member States' procedural rules could provide that the application for review may also be made to the court before which the dispute has been brought.

22. With regard to the two-year period provided for in Article 95a(5) and (6), the Commission points out that, whilst the legal order of the Member State concerned cannot provide for a shorter period, it can certainly allow a longer period.

23. Article 95a should be understood, as is apparent from the *Petroni* judgment [12] and the subsequent case-law, as meaning that the employee concerned is to be granted the most favourable conditions. Since the beneficiary is accorded the sole right of initiative, one is bound to question, under the circumstances of the present case, the effectiveness of the rules. At all events, the national court is free to apply the most favourable rules in each case.

12 — Case 24/75 *Petroni* v *ONPTS* (cited in footnote 5).

24. The Commission proposes the following answer to the request for a preliminary ruling:

1. Article 95a of Regulation No 1408/71 should be interpreted as referring not only to recipients of pensions where the decision on the pension was final at the time of the entry into force of Regulation No 1248/92, but also to recipients of pensions who before its entry into force had already brought proceedings contesting the application of the national rules against overlapping, a final decision not yet having been given at the time of the entry into force of the new rules.

2. It is for the national legislature to lay down the procedural conditions for the application for review and, in particular, to provide whether the application must be made to the competent social security institution or to the court before which the dispute has been brought, without rendering the exercise of the right to a review impossible in practice or excessively difficult.

In the latter case, compliance or failure to comply with the period of two years referred to in Article 95a(5) and (6) has the consequences provided for therein with regard to the coming into effect of the review.

VI — Assessment

25. The subject-matter of the amendment of Regulation No 1408/71 by Regulation No 1248/92 was 'the provisions regulating the award and calculation of pensions'. [13] In that regard, as is stated in the first recital in the preamble to the amending regulation, 'some of these amendments are linked to the case-law of the Court of Justice in this matter'. The 16th recital in the preamble to the amending regulation reads as follows:

'Whereas, to protect migrant workers and their survivors against an excessively stringent application of the national provisions concerning reduction, suspension or withdrawal, it is necessary to include a provision in Regulation (EEC) No 1408/71 laying down strict rules for the application of these provisions'.

26. It must be assumed that application of the new provisions may be more favourable for those entitled to a pension. However, this consequence is by no means inevitable.

13 — See the first recital in the preamble to Regulation No 1248/92.

Cases are certainly conceivable in which application of the new provisions produces a less favourable result for the person concerned. That was the underlying position in the *Baldone* case. [14] Indeed, the representative of the ONP expressly pointed out at the hearing that this reducing effect could be observed particularly in the case of survivor's pensions.

27. In *Baldone*, the Court thus interpreted the transitional provision laid down in Article 95a of the regulation, which is at issue in the present case, in the following way:

'when [a] ... benefit has been awarded prior to the entry into force of the amending regulation, Article 95a(1) to (3) of Regulation No 1408/71, as amended, is not applicable.

Such situations fall instead under Article 95a(4) to (6) thereof.' [15]

28. The Court went on to state:

'The fact that, following an erroneous calculation of the benefit due, the competent authorities of a Member State, after the entry into force of the amending Regulation, recalculate a benefit and correct the amount due *cannot give rise to a new right* but has the effect solely of determining correctly the amount of the benefit, entitlement to which had previously been acquired.' [16]

29. As regards the requirement under Article 95a(4) for an application to be submitted, the Court stated:

'The purpose of Article 95a(4) is to enable the person concerned to ask for the benefits awarded under the unamended regulation to be reviewed where it appears that the rules of the amending regulation are more favourable to him and to benefit from the benefits awarded in accordance with the provisions of the unamended regulation being maintained where they appear more advantageous than those resulting from the amending regulation.

14 — Case C-307/96 *Baldone* v *Institut National d'Assurance Maladie-Invalidité* [1997] ECR I-5123.

15 — Case C-307/96 *Baldone* (cited in footnote 14, paragraphs 11 and 12).

16 — Case C-307/96 *Baldone* (cited in footnote 14, paragraph 13); emphasis added.

It is thus clear both from the terms and the structure of Article 95a(4) that application of the provisions of the amending regulation to pension rights acquired before 1 June 1992 is subject to an express application being made by the person concerned. The competent institution is not therefore entitled to substitute itself for an insured person, *especially where review by that institution of its own motion would operate to the detriment of the person concerned.*' [17]

30. It does not necessarily follow from those words that there is an absolute requirement to submit an application under Article 95a(4) of the regulation, but merely that there is an express prohibition on dispensing with the requirement to submit an application *to the detriment* of the person concerned.

31. The question could now be asked whether, in accordance with the wording and purpose of Article 95a(4), an application is essential, inasmuch as the periods prescribed and procedural consequences laid down in Article 95a(5) and (6) are as such linked to the requirement of the submission of an application.

32. The German text of the provision refers to 'feststellen' (determination) of rights. This could certainly be understood to mean the final determination, both in the administrative procedure and in court proceedings. In the case of pending proceedings, the provision would possibly then not be applicable at all. The French text, on the other hand, refers to 'liquidation d'une pension' (payment of a pension), which the ONP in particular has emphasised. Under that wording, it is the fact of payment of a pension which is of prime importance. The English text of the regulation states that 'a pension was awarded'. In doing so, emphasis is placed on the criterion of the grant of a pension.

33. However, since the Court, in the *Baldone* judgment, [18] took as its basis the date when the rights were acquired, cases in which rights have not been finally determined may also be subsumed under Article 95a(4). This interpretation is also preferable in order to prevent the pension recipient from being deprived of his right of initiative, something to which *strict* attention must be paid, particularly in cases where there may be detrimental effects.

34. On the other hand, it should be borne in mind that Article 95a(4) to (6) is designed to apply to the normal case of pensions awarded prior to 1 June 1992. In interpreting the provisions, account should be taken of the nature of pending proceed-

17 — Case C-307/96 *Baldone* (cited in footnote 14, paragraphs 15 and 16); emphasis added.

18 — Case C-307/96 *Baldone* (cited in footnote 14, paragraph 13).

ings, i.e. pensions which have not been finally awarded.

35. In this connection, it must first be assumed that the applicable substantive provisions are provisions of a regulation which — as the Commission's representative expressly pointed out at the hearing — are, by their nature, directly applicable. It is therefore perfectly proper not to apply the preclusive period provided for in Article 95a(5) in pending proceedings. The two-year preclusive period laid down for reasons of legal certainty is appropriate, where the pension files are closed. During that period, it is possible to check whether the rules applicable from 1 June 1992 might result in a more favourable calculation and, if so, an application for review can be submitted.

36. The fact that the Community legislator certainly did not intend the two-year period during which an application for review may be made with retroactive effect to be an absolute preclusive period is confirmed by Article 95a(6). That provision states that if the application is submitted after the expiry of the two-year period after 1 June 1992, rights are to have effect from the date on which the application was submitted. This provision is, first of all, an expression of the principle of legal certainty. Secondly, it provides a suitable means of maintaining the financial balance between the insurance schemes in question. Nevertheless, this rule applies only 'except where more favourable provisions of the legislation of any Member State apply'.

37. The principle of most favourable treatment is clearly enshrined in that wording. In this respect, it is not necessary to have recourse to the case-law of the Court of Justice [19] establishing that principle with regard to the procedural enforcement of rights conferred by Community law, since that rule of favourable treatment is expressly incorporated into Article 95a(6).

38. Against the background of the case-law of the Court, under which the most favourable treatment principle must be applied, in both substantive [20] and procedural law, [21] to legal situations in which legal positions conferred by Community law are in dispute, it is even conceivable that an *ex officio* review may be conducted in pending proceedings if and in so far as it is *favourable* to the person entitled to the pension.

39. However, that is not important in the present case, since, according to the sub-

19 — See the judgments cited in footnote 5.

20 — Case 24/75 *Petroni* (cited in footnote 5) and Case C-208/90 *Emmott* v *Minister for Social Welfare and Attorney General* [1991] ECR I-4269.

21 — Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989, Case 199/82 *Amministrazione delle finanze dello Stato* v *San Giorgio* [1983] ECR 3595 and Case C-246/96 *Magorrian and Cunningham* (cited in footnote 9).

missions of the parties, 'more favourable provisions of the legislation of any Member State' within the meaning of Article 95a(6) are in any case applicable. Accordingly, under Articles 807 and 808 of the Code Judiciaire, a party may, in the course of judicial proceedings, supplement or amend its submissions with regard to the matter in dispute. Such procedural submissions then have retroactive effect in the pending proceedings. In the main proceedings, an application was expressly submitted in each case. Those applications have retroactive effect pursuant to Articles 807 and 808. Reference should be made in this respect to the judgment of the Cour de Cassation of 22 May 1978, cited by the representative of the pension claimants at the hearing. [22] According to that judgment, the court must, upon application, also take into consideration the circumstances which did not arise until after the administrative decision if they are capable of increasing the rights of the person entitled. [23]

40. In the light of the specific facts of the present case, the question also arises whether it may not have been an abuse of the law by the ONP to take as the formal basis the date when the application was submitted, with the abovementioned consequences flowing from Article 95a(6).

41. It is known that in both cases the ONP carried out recalculations (évaluations) of the pension amounts on the basis of the rules applicable from 1 June 1992. It was obvious, after that recalculation at the latest, that the survivor's pensions in issue could be claimed at a higher amount. The recalculation was the subject of a letter of 22 September 1994 to the ONP's legal representative. Via an indirect route it fell into the hands of the plaintiffs and respondents. It is notable in this connection that the letter was written at a time when the two-year period under Article 95a(5) had already expired. Moreover, the persons entitled were not informed that the higher pensions which had been calculated could be paid out only if an application were submitted.

42. If the ONP made the effort to carry out a recalculation and to send that calculation to the person entitled, the question arises whether it was required, as part of a duty to take due care and to provide assistance, to inform the persons entitled to the pensions, *before* the expiry of the two-year period and *with reference to* that period, that they might be entitled to apply for a review. In the case of Mrs Camarotto, this question is particularly relevant since, in all likelihood, a review of the pension took place in any case in the light of the death of her husband on 28 January 1994, given that, as a result

22 — See point 16 above.

23 — The Cour de Cassation ruled: 'Saisi d'un litige ayant pour objet des droits résultants (de la loi concernant les allocations aux handicapés) ... (le juge du travail) a le pouvoir non seulement de statuer sur les droits des handicapés existants lors de l'introduction de la demande qu'il a formé par l'application de ladite loi, mais doit tenir compte des circonstances survenues postérieurement à la décision administrative rendue lorsque ces éléments, ..., sont de nature à augmenter ces droits.' Quoted from *Journal des Tribunaux du Travail* (cited in footnote 8).

of the death, the pension was converted from an old-age pension into a survivor's pension. In addition, 28 January 1994 fell within the two-year period referred to in Article 95a(5) of the regulation. It seems reasonable to carry out a recalculation of the pensions when such events occur and, where appropriate, to inform the recipients of the possibility open to them, as actually happened in a piecemeal way at a later date.

43. Ultimately, however, these considerations are not important in the present case since, according to the approach adopted above, the application for a review of the pension submitted in the judicial proceedings may be recognised to have retroactive effect pursuant to the Member States' procedural rules, with the result that the increased survivor's pension can be claimed as from 1 June 1992.

44. For the purposes of responding to the request for a preliminary ruling, it must be presumed, with regard to the first question, that, in accordance with the judgment in *Baldone,* [24] the transitional rules contained in Article 95a of Regulation No 1408/71 are applicable in principle to all rights acquired before 1 June 1992. Article 95a therefore applies not only to recipients of pensions where the decision granting the pension was final at the time of the entry into force of the amendment, but also to those who before the entry into force of the amendments introduced by the new regulation had already brought proceedings before a national court, provided that the specific aim of the proceedings was to obtain the pension right by contesting the application of the national rules against overlapping, a final decision in those proceedings not yet having been given at the time of the entry into force of the new provisions.

45. The second question referred by the national court should therefore be answered to the effect that Community law does not prescribe any form for an application under Article 95a(4). It is thus for the legal order of the Member State concerned to lay down rules prescribing the conditions and procedure for obtaining a review. It is therefore perfectly possible for the application to be made not only to the competent social security institution, but also — in accordance with the applicable rules of procedure — to the court before which the dispute has been brought. In the case of pending proceedings, account is to be taken of this particular situation in interpreting Article 95a(5) and (6). The two-year period is not in that respect to be regarded as absolute, with the result that an application submitted after the expiry of that period can certainly also have retroactive effect.

24 — Case C-307/96 *Baldone* (cited in footnote 14, paragraph 13).

VII — Conclusion

46. In the light of the above considerations, I propose that the Court give the following answer to the questions referred by the national court:

(1) Article 95a of Regulation (EEC) No 1408/71, as amended by Regulation (EEC) No 1248/92, applies in principle to all rights acquired before 1 June 1992. Article 95a is therefore applicable not only to recipients of pensions where the decision granting the pension was final at the time of the entry into force of the amendment, but also to those who before the entry into force of the amendments introduced by the new regulation had already brought proceedings before a national court with the specific aim of obtaining the pension right by contesting the application of the national rules against overlapping, a final decision in those proceedings not yet having been given at the time of the entry into force of the new provisions.

(2) It is for the legal order of the Member State concerned to lay down rules prescribing the conditions and procedure governing an application for review under Article 95a(4). It is therefore perfectly possible for the application to be made not only to the competent social security institution, but also to the court before which the dispute has been brought. In the case of pending proceedings, account is to be taken of this particular situation in interpreting Article 95a(5) and (6). The two-year period is not in that respect to be regarded as absolute, with the result that an application submitted after the expiry of that period can certainly also have retroactive effect.