

### **Case C-118/00 Larsy [2001]**

**Facts:** Mr Larsy was a self-employed nursery gardener in Belgium and France, established near the border in Belgium. He contested the government's decision to reduce his pension entitlement, because the government found he was also awarded a retirement pension in France. The Labour Tribunal initially dismissed his action, but Mr Larsy's brother's action, brought in a similar legal and factual situation, was upheld. The Court of Justice referred in a preliminary ruling that the rule against overlapping benefits did not apply where a person had worked in two Member States during the same period and had been obliged to pay both States' old-age pension insurance contributions. Mr Larsy was finally awarded a full retirement pension, based on the terms applied to his brother, but his application for damages was dismissed. In connection with these proceedings, the Labour Court of Mons referred for a preliminary ruling a question on the interpretation of the conditions governing a Member State's liability for damage caused to individuals by breaches of Community Law.

**Held:** The national court was asking whether the incorrect application of an European Regulation's provisions, when according to a previous judgment of the Court the institution wrongly applied a national anti-overlapping rule, constitutes a serious breach of Community law. The question was confined to the second of the three conditions that must be satisfied for a Member State to be required to make reparation for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible, that is: the rule of law infringed must confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation and the loss or damage. A breach of Community law is sufficiently serious where a Member State has manifestly and gravely disregarded the limits on its legislative powers or, at the time when it committed the infringement, it had only considerably reduced or no discretion. In the main proceedings, the competent national institution had no substantive choice.

The competent institution failed to draw all the consequences from a judgment of the Court providing a clear answer to the issues before it, applicable to the situations concerned in exactly the same manner. It was clear from the wording and purpose of the provisions that these did not apply in the circumstances of the case. This therefore constitutes a serious breach of Community law.