OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 30 MARCH 1977

My Lords,

This case comes before the Court by way of a reference for a preliminary ruling by the Hoge Raad of the Netherlands. The Appellant before that Court is Mr H.O.A.G.M. Perenboom. The Respondent is the 'inspecteur der directe belastingen' (Inspector of Direct Taxes) for Nijmegen. Essentially the question at issue between them is whether Mr Perenboom was liable to pay Dutch social security contributions for the year 1972. Mr Perenboom's appeal to the Hoge Raad is against a Judgment of the Gerechtshof of Arnhem, dated 31 January 1975, holding that he was so liable.

The facts as found by the Gerechtshof are briefly these.

Mr Perenboom was born in August 1955. Throughout 1972 he was resident with his parents in Nijmegen. He was at school until June of that year, when he obtained his certificate of general secondary education. Having failed to find employment in the Netherlands, he went to work in the Federal Republic of Germany from 14 June to 18 August and again from 2 October to 21 December 1972. The wages that he earned there were subjected to German income tax and to German social security contributions. The total amount of those wages, converted from DM into Dutch currency, and after allowing for certain deductions permitted by Dutch fiscal law, was 4 015 guilders. That sum was exempt from Dutch income tax, not only because it was below the Dutch tax threshold, but also because it had borne German tax. At no time during 1972 was Mr Perenboom employed in the Netherlands.

The relevant Dutch social security legislation is referred to by the Hoge Raad in its Order for Reference. It consists of four 'general' statutes, providing for different kinds of benefits, namely the Algemene Ouderdomswet (old-age benefits), the Algemene Weduwen- en Wezenwet (benefits for widows and orphans), the Algemene Kinderbijslagwet (benefits for dependent children) and the Algemene Wet Bijzondere Ziektekosten (cover in respect of special medical expenses). It seems that everyone between the ages of 15 and 65 who is resident in the Netherlands is insured under those statutes and is assessable to contributions thereunder on the basis of taxable income. Benefits are not however related to contributions, so that a person may receive benefit though his income has never been sufficient to render him liable to contributions.

Where a person is subject to that legislation for only part of a year, his contributions are assessed on a proportionate part of his income, a year being deemed for this purpose to consist of 360 days (see Articles 4 and 5 of the implementing regulation — Uitvoeringsbeschikking premieheffing volksverzekeringen — of 24 February 1968). In the case of Mr Perenboom it was conceded by the Respondent that by virtue of Community law (Article 12 (1) of Council Regulation No 3 and Article 13 of Council Regulation No 1408/71) he was subject to German legislation and not to Dutch legislation during the periods for which he worked in the Federal Republic. It is common ground that the remaining parts of the year 1972 amounted to 217 days. On that footing the Respondent assessed Mr Perenboom to contributions on 217/360ths of his earnings of 4 015 guilders, i.e. on 2 420 guilders. That assessment was upheld by the Gerechtshof of Arnhem.

It is not in doubt that the assessment was valid so far as Dutch law is concerned.

Mr Perenboom's contention is however that, in so far as the application of that law resulted in the attribution to him for a part of the year during which he was subject to Dutch social security legislation, but during which he earned nothing, of a proportion of the wages that he earned while working in Germany and subject to German legislation, it was incompatible with Community law. He points out that it meant that that proportion of his earnings were assessed to social security contributions twice, once in Germany and once in the Netherlands, which, he says, was contrary to the intention of the relevant Community regulations.

Your Lordships will remember that Regulation No 3 was supplanted by Regulation No 1408/71 as from 1 October 1972. Thus the former Regulation applied during the first period for which Mr Perenboom worked in Germany, whilst the latter applied during the second.

The relevant provision of Regulation No 3 is, as I have indicated, Article 12 (1). This was so far as material in the following terms (as usual, there being no authentic English text of Regulation No 3, I cite the French) (JO p. 507 of 16. 12. 1968):

'Sous réserve des dispositions du présent titre, les travailleurs salariés ou assimilés occupés sur le territoire d'un État membre sont soumis à la législation de cet État, même s'ils résident sur le territoire d'un autre État membre ...'

That provision formed part of a fasciculus of provisions of Regulation No 3, Articles 12 to 15, which were grouped under Title II and headed 'Dispositions déterminant la législation applicable'. The purpose of those provisions was, as is stated in a number of Judgments of this Court, to ensure that, in general, a worker should, at any one time, be subject to the social security legislation of only one Member State, so as to avoid, in the interests not only of the worker himself and of his employer or employers, but also of the social security institutions of the Member States, unnecessary duplications and complications, which might in themselves constitute obstacles to the free movement of workers within the Community. I collected those judgments in my opinion in Case 8/75 *CPAM Sélestat* v *Football Club d'Andlau* [1975] ECR at p. 753, where I also pointed out (at p. 754) that, where the legislation of a particular Member State was, under those provisions, applicable to a particular worker, that legislation applied to him both for the purpose of contributions and for the purpose of benefits. Those considerations appear to me to underlie the Judgment of the Court in the *Football Club d'Andlau* case itself.

In two of the judgments in question, those in Case 92/63 *Nonnenmacher* v *Sociale Verzekeringsbank* [1964] ECR 281 and Case 19/67 *Sociale Verzekeringsbank* v *Van der Vecht* [1967] ECR 345, the Court formulated an exception to the general principle. It held that Article 12 did not preclude a Member State other than that in whose territory a worker was employed from applying its social security legislation to him, even where to do so would lead to an increase in the contributions to be borne by him or his employer, if it would afford him some 'corresponding supplementary protection by way of social security'. This exception is expressly referred to by the Hoge Raad in its Order for Reference, where it cites the *Van der Vecht* case.

A similar code for ascertaining the legislation applicable to a worker is contained in Title II, comprising Articles 13 to 17, of Regulation No 1408/71 (OJ, Special Edition 1971, p. 416). An important change is however introduced by Article 13 (1) of that regulation. This provides:

'A worker to whom this Regulation applies shall be subject to the legislation

of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.'

It is thus no longer open, in any circumstances, to a Member State other than that whose legislation is, under the code, applicable to a particular worker to compel him or his employer to pay contributions under its own legislation. There can be duplication of contributions only under Article 15, which relates to 'voluntary insurance or optional continued insurance'. In other words there can be such duplication only by the choice of the worker concerned. It is interesting that this brings the law back to what Mr Advocate-General Lagrange considered that it ought to be held to be under Regulation No 3 — see his opinion in the *Nonnenmacher* case (Rec. 1964 at pp. 585-586) and also renders obsolete, or at least obsolescent, the criticisms of the *Nonnenmacher* and *Van der Vecht* judgments made by certain learned writers.

Otherwise, Regulation No 1408/71 did not effect any change in the law material to this case. In particular, Article 13 (2), reproducing Article 12 (1) of Regulation No 3, provides:

'Subject to the provisions of Articles 14 to 17:

(a) a worker employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State ...'

As the Hoge Raad and the Commission both point out, the issue in the present case is not so much whether the German and Dutch legislations could apply simultaneously — for it is common ground that the latter did not apply while Mr Perenboom was employed in Germany — but whether Mr Perenboom's earnings in Germany could to any extent be brought into the assessment of his contributions to Dutch social security for the period during which he was admittedly subject only to Dutch legislation.

Two questions are referred to this Court by the Hoge Raad, the first relating to Regulation No 3 and the second to Regulation No 1408/71. They are as follows:

'1. If a worker resides for a whole calendar year in one Member State (hereinafter referred to as the "State of residence") and for a part of that year works in another Member State with the result that in that part of the year he is subject to the social security legislation of the other Member State and is not an insured person under the legislation of the State of residence in the same part of the year, but for the remaining portion of the year is subject to the legislation of the State of residence, does Article 12 of Regulation No 3 of the Council of the European Economic Community, whether or not in conjunction with other rules of Community law, permit the wages earned by the worker in the other Member State to be taken into account in the State of residence for the levying of a contribution for social insurance so that the total annual income of the worker, including the wages earned in the other Member State, is charged proportionately to the period during which the legislation of the State of residence is applicable, although under the system of the State of residence the extent of the entitlement derived from the insurance is not dependent on the payment of contributions in the sense that if an insured resident has no income assessable for contributions and subject to charge for a number of years this leads to a reduction in the entitlement?

2. How is the admissibility to be adjudged if the employment in the other Member State occurs after 1 October 1972, that is to say after the

entry into force of Article 13 of Regulation No 1408/71 of the Council of the European Communities?'

Perhaps the most striking thing about those questions is that they are framed, the first explicitly and the second implicitly, on the assumption that social security contributions are necessarily assessed on the basis of a calendar year. No such assumption underlies Regulation No 3 or Regulation No 1408/71, for those regulations have to be uniformly applied not only in Member States (such as the Netherlands) where the basis of assessment is annual, but also in other Member States where it is different. There is in this respect considerable disparity between the systems obtaining in the different Member States. Thus in some (e.g. Italy and the United Kingdom) the basis of assessment is weekly. In others (e.g. Germany) it depends on the periodicity of the pay-days of the particular worker concerned. In others (e.g. Belgium and France) it depends on that periodicity but is subject to ceilings applied at various intervals (monthly or quarterly, according to the circumstances, in Belgium, annually in France). And so on.

Therein, I think, lies the key to this case.

Title II of Regulation No 3 and the same Title of Regulation No 1408/71 determine the legislation applicable to a worker for the whole period, whatever its length, during which the circumstances of his employment answer a particular description. During that period, leaving aside the exception revealed by the judgments in the *Nonnenmacher* and *Van der Vecht* cases, and leaving aside cases of voluntary or optional continued insurance, no Member State other than that whose legislation is thus rendered applicable, is entitled to exact contributions from the worker concerned. It must, in my opinion, logically follow that no such Member State is entitled to legislate so as artificially to ascribe any part of that worker's earnings for that period to some other period during which its own legislation is applicable to him, so as to enable it to charge him contributions in respect of them. Translated into terms of the present case, this means that so long as Mr Perenboom was employed in Germany, albeit resident in the Netherlands, the Federal Republic was exclusively entitled to exact social security contributions from him, and that no Dutch legislation could validly deem any part of his earnings for that period to be attributable to some other period, even though it happened to fall in the same calendar year, so as to enable Dutch social security contributions to be assessed on them.

As regards the *Nonnenmacher* and *Van der Vecht* exception, I think it enough to say that, since we have it on the authority of the Hoge Raad itself that any contributions paid by Mr Perenboom would not affect his entitlement to benefit under the Dutch legislation, that exception cannot apply.

In the result I am of the opinion that, in answer to the questions referred to the Court by the Hoge Raad, Your Lordships should rule that —

(1) Article 12 of Regulation No 3 of the Council of the European Economic Community precluded a Member State other than that to whose legislation a worker was thereby made subject for a particular period from taking into account wages earned by him during that period in the assessment of his social security contributions for some other period,

unless he was thereby rendered entitled to some supplementary protection by way of social security.

(2) Article 13 of Regulation No 1408/71 of the Council of the European Communities precludes such a Member State from taking such wages into account for such a purpose in any circumstances.