

which contributions were paid in accordance with that legislation;	before 1 July 1967 in respect of which no contributions were paid;
(b) a period of paid employment completed in the Netherlands	are to be regarded as periods of insurance and not as periods treated as such.

In Case 285/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van Beroep [Social Security Court], Amsterdam, for a preliminary ruling in the action pending before that court between

W. J. DERKS

and

NIEUWE ALGEMENE BEDRIJFSVERENIGING [New General Professional and Trade Association],

on the interpretation of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) and of Regulation No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1972 (I), p. 159),

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keefe and G. Bosco, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and written procedure

Relevant legislative provisions

(a) Relevant provisions of national law

In the Netherlands until 1 January 1965 the compulsory insurance of workers against the financial consequences of invalidity and old age was governed by the Invaliditeitswet [Invalidity Law]. From 1 July 1967 the Invalidity Law was replaced by the Wet op de Arbeidsongeschiktheidsverzekering [Law on Insurance against Incapacity for Work, hereinafter referred to as "the Incapacity (Insurance) Law"]. In order to provide for the cases governed by the Invalidity Law the Liquidatiewet Invaliditeitswetten [Invalidity Laws (Repeal) Law] was passed on 10 December 1964 (Staatsblad No 488).

The rules contained in the Invalidity Laws (Repeal) Law, as amended, may be summarized as follows:

- (1) Payment of contributions under the Invalidity Law could no longer be made from 1 January 1965 (Article 3 of the Invalidity Laws (Repeal) Law);
- (2) With regard to invalidity arising after 1 July 1967 a right to benefit could no longer arise under the Invalidity Law (Article 10 (1) of the Invalidity Laws (Repeal) Law);

- (3) Invalidity pensions being paid at that time which were increased under the Interimwet Invaliditeitsrekkers [Interim Law on the Rights of Beneficiaries of Invalidity Benefits] were converted under the Wet Overgangsregeling Arbeidsongeschiktheidsverzekering [Insurance against Incapacity for Work (Transitional Provisions) Law] into benefits under the incapacity (Insurance) Law (Article 10 (1) of the Invalidity Laws (Repeal) Law and Article 3 of the Interim Law on the Rights of Beneficiaries of Invalidity Benefits);

- (4) Benefits which were not increased under the Interim Law on the Rights of Beneficiaries of Invalidity Benefits are paid under the Invalidity Law (Article 10 (1) of the Invalidity Laws (Repeal) Law);

- (5) Rights to an old-age pension under the Invalidity Law were redeemed in respect of insured persons who were under the age of 36 on 1 July 1967 or who were above that age but whose old-age pension at the age of 65 would be less than HFL 60 per annum (Articles 22 and 32 (1) of the Invalidity Laws (Repeal) Law and the Royal Decree of 26 June 1967, Staatsblad No 367).

Other insured persons who had acquired rights to an old-age pension under the Invalidity Law would receive, on completion of their 65th year, an old-age pension under the Invalidity Law supplementary to their old-age pension under the Algemene Ouderdomswet [General Law on Old-age Insurance].

The Law of 26 May 1976 further amending the Invalidity Laws (Repeal) Law inserted therein Articles 32a to 32m inclusive so that invalidity pensions which should have been paid from 1 January 1976 or a later date were redeemed by the payment of a single benefit.

(b) Relevant provisions of Community law

(1) In order to apply the rules of calculation provided for by Article 46 (2) in the event of total or partial overlapping of insurance periods, it is necessary to refer to Article 15 (1) (b) and (c) of Regulation No 574/72 which provides that:

“(b) when a period of insurance or residence completed under compulsory insurance under the legislation of one Member State coincides with a period of insurance completed under voluntary or optional continued insurance under the legislation of another Member State, only the period completed under compulsory insurance shall be taken into account;

(c) when a period of insurance or residence, other than a period treated as such, completed under the legislation of one Member State coincides with a period treated as such under the legislation of another Member State, only the period other than a period treated as such shall be taken into account.”

(2) The concept of a period of insurance is to be found in Article 1 (r) of Regulation No 1408/71 which states:

“‘periods of insurance’ means periods of contribution or periods of employment as defined or recognized 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.”

(3) After the Invalidity Law had been replaced by the Incapacity (Insurance) Law the question arose as to how periods of insurance completed under the Invalidity Law were to be transferred and taken into account, after 1 July 1967, in relations with other Member States and for the purposes of calculating benefits *pro rata temporis*. That question is linked to the fact that affiliation of insured persons to the scheme under the Invalidity Law involved lacunae which made it impossible to establish on the basis of the membership register the periods of insurance completed.

In that respect Circular No 315 of the Sociale Verzeringsraad [Social Security Council] of 8 March 1967 gave instructions in connection with the application of Regulations Nos 3 and 4 for the taking into account and transference to foreign institutions of periods of insurance completed before 1 July 1967. At the present time those instructions have been expressly repeated in paragraph 4 of Part H of Annex V to Regulation No 1408/71 in relation to the application of Community regulations now in force, as follows:

“Application of Netherlands legislation on insurance against incapacity for work

(a) For the purposes of the provisions of Article 46 (2) of the regulation, periods of employment and periods treated as such completed under Netherlands legislation before 1 July 1967 shall also be considered as periods of insurance completed under Netherlands legislation on insurance against incapacity for work.

(b) The periods to be taken into account in pursuance of the provisions of subparagraph (a) shall be considered as periods of insurance completed under a legislation of the type referred to in Article 37 (1) of the regulation.”

II — Facts

Mr Derks was an employed person in the Netherlands from 7 June 1955 to 1 April 1971. From 7 June 1955 he made 500 weekly contributions under the Invalidity Law and after 1 July 1967, that is to say the date on which the Incapacity (Insurance) Law came into force, until 31 March 1971, the date on which his gainful employment in the Netherlands terminated, he was insured under the latter law. In accordance with the provisions of the Invalidity Laws (Repeal) Law Mr Derks's right to an old-age pension under the Invalidity Law was redeemed in June 1980 by the Sociale Verzekeringsbank [Social Security Bank].

Mr Derks also paid voluntary contributions in the FR of Germany for the years 1957 to 1966 and for 1968.

With effect from 7 October 1977 Mr Derks was granted a Netherlands pension in respect of his incapacity for work which arose on 8 October 1976. Pursuant to Article 46 (2) of Regulation No 1408/71 the defendant in the main proceedings took into account on the one hand the period of insurance in the Netherlands from 1 January 1968 to 31 December 1968 inclusive, but not the corresponding period in Germany, and on the other hand the period of insurance in Germany from 1 January 1957 to 31 December 1966 inclusive, but not the corresponding period in the Netherlands.

The Nieuwe Algemene Bedrijfsvereniging [hereinafter referred to as “the Association”] relied on Article 15 (1) (c) of Regulation No 574/72.

According to it Mr Derks was insured voluntarily in Germany between 1 January 1957 and 31 December 1966 whilst the periods completed in the Netherlands during that time were treated as periods of insurance. Between 1 January 1968 and 31 December 1968 inclusive Mr Derks was insured voluntarily in Germany but compulsorily in the Netherlands.

Mr Derks brought an action against that decision before the Raad van Beroep, Amsterdam, which made an order referring the following questions to the Court of Justice under Article 177 of the Treaty.

1. For the purposes of the application of Article 46 (2) of Regulation (EEC) No 1408/71 of the Council must a contribution period under the Invaliditeitswet [Invalidity Law] be deemed to have been completed under “legislation” within the meaning of Article 1 (j) in conjunction with Article 1 (r) and with Article 94 (2) of that regulation?
2. If a contribution period is completed under “legislation” within the meaning of the said Article 1 (j) in conjunction with Article 1 (r) is it to be regarded as an insurance period other than a period treated as such, within the meaning of Article 15 (1) (c) of Regulation (EEC) No 574/72 of the Council or is it to be regarded as a period treated as an insurance period, completed under the legislation of a Member State, within the meaning of the last-mentioned provision?
3. In the case of a period completed before 1 July 1967, for which no contributions were paid under the Invaliditeitswet although the person concerned was gainfully employed within the meaning of paragraph 4 (a) of Part H of Annex V to Regulation No 1408/71 (as that provision was worded at the time of the contested

decision) must the period in question be regarded as an insurance period other than a period treated as such, within the meaning of Article 15 (1) (c) of Regulation No 574/72, or as a period treated as an insurance period, completed under the legislation of a Member State, within the meaning of the last-mentioned provision.

4. If a period treated as a period of compulsory insurance, completed under the legislation of a Member State, coincides with a period of voluntary insurance other than a period treated as such, does the question whether a period is compulsory or voluntary (Article 15 (1) (b)) or the question whether a period is "treated as such, completed under the legislation of one Member State" (Article 15 (1) (c)) take precedence under Article 15 of Regulation No 574/72?

The order making the reference for a preliminary ruling was lodged at the Court Registry on 27 October 1982.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the Association represented by F. W. M. Keunen, a member of the Legal Department (Social Security) of the *Geenschappelijk Administratiekantoor* [Joint Administrative Office], acting as Agent, and by the Commission of the European Communities, represented by its Legal Adviser, J. Amphoux, acting as Agent, assisted by F. Herbert of the Brussels Bar.

Upon hearing the report of the Judge-*Rapporteur* and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. By order of 23 March 1983 the Court, pursuant to Article 95 (1) and (2) of the Rules of

Procedure, decided to assign the case to the First Chamber.

III — Written observations submitted to the Court

1. Observations submitted by the Association

With regard to the first question the Association considers it necessary to refer to paragraph 4, Part H, of Annex V to Regulation No 1408/71 in order to determine the meaning of "periods of insurance" in Article 46 (2) thereof. Paragraph 4 provides that for the purposes of the provisions of Article 46 (2) of Regulation No 1408/71, periods of paid employment and periods treated as such completed in the Netherlands before 1 July 1967 are to be considered as periods of insurance completed under the Incapacity (Insurance) Law. Periods of insurance completed under the Invalidity Law are no longer taken into account according to the criteria in force at the time in respect of the implementation of that law but, according to Circular No 315 and paragraph 4 of Part H of Annex V to Regulation No 1408/71, account is taken of all periods of paid employment as periods of insurance whereas at the time all periods of paid employment were far from being regarded as periods of insurance under the Invalidity Law. Consequently the Association takes the view that the periods thereby taken into account could not be regarded as periods of insurance for the purposes of Article 1 (r) of Regulation No 1408/71 but rather as periods treated as such.

The reply to the second question follows from the reply which it is suggested should be given to the first question. The periods of paid employment completed

before 1 July 1967 must be regarded as "periods treated as such" within the meaning of Article 15 (1) (c) of Regulation No 574/72.

With regard to the third question it is possible to speak of periods of insurance under the Invalidity Law only where during such periods contributions were paid. Any period in respect of which no contribution was paid could be taken into account only as a period treated as a period of insurance under the Netherlands legislation.

With regard to the fourth question the Association is of the opinion that in the whole corpus of rules contained in Article 15 (1) (b), (c) and (d) of Regulation No 574/72 the expression "periods of insurance" refers exclusively to periods which are not "treated as such", that is to say actual periods of insurance. Within the category of actual periods of insurance it is possible to differentiate between periods of compulsory insurance and periods of voluntary insurance.

The periods treated as periods of insurance are not actual periods of insurance and therefore in the context of Article 15 it is not possible to speak of periods treated as periods of compulsory insurance and even less possible to raise the question whether the rules provided for in Article 15 (1) (b) take precedence over those periods or in Article 15 (1) (c) or vice versa, since those provisions relate to completely different situations. On those grounds the Association considers that it is not possible to reply to the fourth question put by the Raad van Beroep. It restricts itself to the observation that a period treated as a period of insurance always takes second place to an actual period of insurance, regardless of whether the period is a period of compulsory or voluntary insurance.

2. *Observations submitted by the Commission*

The *Commission* observes that an examination of the relationship established by paragraph 4 of Part H of Annex V between periods of insurance completed under the Incapacity (Insurance) Law and periods of insurance completed under the WAO shows that the relationship differs in two respects from the treatment as periods of insurance referred to in Article 1 (r) of Regulation No 1408/71 for the following reasons:

- (a) Periods completed under the Invalidity Law are not fictitious periods, that is to say periods for which insurance was not in fact effected. There is no doubt that at the material time the plaintiff actually completed periods of insurance under the legislation in force. Until 1 January 1965 he was compulsorily insured, and from 1 January 1965 to 31 December 1966 he continued to be insured, as a wage-earner.
- (b) Periods completed under the Invalidity Law are not treated as periods of insurance by the national legislation applicable to periods of insurance completed under the Incapacity (Insurance) Law. They are treated as such only by a provision of Regulation No 1408/71, namely Annex V.

Consequently the *Commission* considers that the periods at issue are rather periods regarded as having been completed under the Incapacity (Insurance) Law. Annex V refers not to periods of insurance prior to the entry into force of the Incapacity (Insurance) Law but to periods of activity as an employed person pursued in the Netherlands.

Where periods of voluntary insurance and periods treated as periods of compulsory insurance coincide preference must be given to the latter.

Article 15 (1) (b) prevails over Article 15 (1) (c).

According to the Commission, the principles to be applied with regard to coinciding periods are the following:

The superimposition of periods of compulsory insurance actually completed is excluded in principle in view of the fact that a worker to whom Regulation No 1408/71 applies is subject only to the legislation of a single Member State;

The superimposition of periods of compulsory insurance is therefore only possible where the legislation in question also takes into account fictitious periods treated as periods of insurances which coincide with a period of compulsory insurance completed in another Member State;

However, where a period of compulsory insurance coincides with a period of voluntary insurance only the former may be taken into account;

Any superimposition of periods of voluntary insurance is excluded in view of the fact that the person concerned must exercise a right of option (Article 15 (2) of Regulation No 1408/71); in such a case, once again, it is only possible to envisage the superimposition of periods of insurance where fictitious periods coincide with periods which have actually been completed.

According to the Commission it appears that the case envisaged in Article 15 (1) (c) can occur only where periods relating to one and the same insurance scheme overlap.

Where, as in this case, a fictitious period of compulsory insurance coincides with a period of voluntary insurance which has actually been completed Article 15 (1) (b) is applied.

In the light of the foregoing considerations the Commission's views with regard to the questions referred to the Court are as follows:

The reply to the first question may be deduced from paragraph 4 of Part H of Annex V to Regulation No 1408/71. It follows from that provision that periods completed under the Invalidity Law must be taken into account for the purposes of the calculations provided for in Article 46 (2) of that regulation.

With regard to the second question the Commission considers that periods of insurance completed under the Invalidity Law are not "periods treated as such" within the meaning of Article 1 (r) of Regulation No 1408/71 and Article 15 (1) (c) of Regulation No 574/72.

With regard to the third question it seems that in this case the periods in respect of which no contribution has been paid must be regarded under the Invalidity Law as periods which have actually been completed and not as periods treated as insurance periods; furthermore in paragraph 4 (a) of Part H of Annex V the relationship between the periods completed under the Invalidity Law and the insurance provided for by the Incapacity (Insurance) Law is not based on the criterion of insurance but on that of activity as an employed person.

In the Commission's opinion the fourth question has no purpose in so far as it is admitted that periods completed under the Invalidity Law are not to be regarded as periods treated as periods of insurance.

In addition the Commission considers that in relation to the case referred to in the question Article 15 (1) (b) takes precedence over Article 15 (1) (c).

IV — Oral procedure

The Association, represented by F. W. M. Keunen, a member of the Legal Department (Social Security) of the Gemeenschappelijk Administratiekantoor and the Commission of the European Communities, represented by its Legal

Adviser, J. Amphoux, assisted by F. Herbert of the Brussels Bar, presented oral argument at the sitting on 30 June 1983.

The Advocate General delivered her opinion at the sitting on 17 November 1983.

Decision

- 1 By order of 19 October 1982, which was received at the Court on 27 October, the Raad van Beroep [Social Security Court], Amsterdam, referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty four questions relating to the interpretation of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416).
- 2 Those questions arose in the course of proceedings between W. Derks and the Nieuwe Algemene Bedrijfsvereniging, a Netherlands social security institution (hereinafter referred to as "the Association").
- 3 Mr Derks was an employed person in the Netherlands from 7 June 1955 to 1 April 1971. From 7 June 1955 he made 500 weekly contributions under the Invaliditeitswet [Invalidity Law] and from 1 July 1967 to 31 March 1971, that is to say the date on which he ceased to be an employed person in the Netherlands, he was insured under the Wet op de Arbeidsongeschiktheidsverzekering [Law on Insurance against Incapacity for Work, hereinafter referred to as "the Incapacity (Insurance) Law"], which replaced the Invalidity Law. The Invalidity Law was so-called "Type B legislation" under which the amount of the benefits was not independent of the length of the periods of insurance. The Incapacity (Insurance) Law is so-called "Type A legislation", under which the amount of the benefits is independent of the length of the periods of insurance.

- 4 Mr Derks also made voluntary contributions in Germany during the years 1957 to 1966 and in 1968. From 1 April 1971 he was subject only to the German scheme of compulsory invalidity insurance.
- 5 With effect from 7 October 1977 Mr Derks was granted a Netherlands pension in respect of his incapacity for work which arose on 8 October 1976. Pursuant to Article 46 (2) of Regulation No 1408/71 the Association took into account on the one hand the period of insurance in the Netherlands from 1 January to 31 December 1968 inclusive, but not the corresponding period in Germany and on the other hand the period of insurance in Germany from 1 January 1957 to 31 December 1966 inclusive, but not the corresponding period in the Netherlands.
- 6 The Association relied on Article 15 (1) (c) of Regulation No 574/72 of the Council of 21 March 1972 (Official Journal, English Special Edition 1972 (I), p. 159) which was adopted in order to implement Regulation No 1408/71. According to the Association, during the period from 1 January 1957 to 31 December 1966 inclusive, Mr Derks was insured voluntarily in the Federal Republic of Germany whereas in the Netherlands, during the same period, he completed periods treated as periods of insurance. During the period from 1 January 1968 to 31 December 1968 inclusive Mr Derks was insured voluntarily in the Federal Republic of Germany but compulsorily in the Netherlands.
- 7 Mr Derks brought an action against that decision before the Raad van Beroep, Amsterdam. That court, considering that the judgment to be given depended on the interpretation of Community law, referred the following questions to the Court for a preliminary ruling:
 - “1. For the purposes of the application of Article 46 (2) of Regulation (EEC) No 1408/71 of the Council must a contribution period under the Invaliditeitswet [Invalidity Law] be deemed to have been completed under “legislation” within the meaning of Article 1 (j) in conjunction with Article 1 (r) and with Article 94 (2) of that regulation?
 2. If a contribution period is completed under “legislation” within the meaning of the said Article 1 (j) in conjunction with Article 1 (r) is it to be regarded as an insurance period other than a period treated as such, within the meaning of Article 15 (1) (c) of Regulation (EEC) No 574/72 of the Council or is it to be regarded as a period treated as an insurance period, completed under the legislation of a Member State, within the meaning of the last-mentioned provision?

3. In the case of a period completed before 1 July 1967, for which no contributions were paid under the Invaliditeitswet although the person concerned was gainfully employed within the meaning of paragraph 4 (a) of Part H of Annex V to Regulation No 1408/71 (as that provision was worded at the time of the contested decision) must the period in question be regarded as an insurance period other than a period treated as such, within the meaning of Article 15 (1) (c) of Regulation No 574/72, or as a period treated as an insurance period, completed under the legislation of a Member State, within the meaning of the last-mentioned provision?
 4. If a period treated as a period of compulsory insurance, completed under the legislation of a Member State, coincides with a period of voluntary insurance other than a period treated as such, does the question whether a period is compulsory or voluntary (Article 15 (1) (b) or the question whether a period is "treated as such, completed under the legislation of one Member State" (Article 15 (1) (c)) take precedence under Article 15 of Regulation No 574/72?"
- 8 Until 1 January 1965 the Invalidity Law provided a scheme for the compulsory insurance of workers against the financial consequences of invalidity and old age, and the insurance also operated as an old-age insurance scheme for its members, which from 1957 was a supplementary old-age insurance scheme. With effect from 1 July 1967 the Invalidity Law was replaced by the Incapacity (Insurance) Law.
 - 9 In order to deal with the cases subject to the Invalidity Law the Netherlands legislature on 10 December 1964 passed the Liquidatiewet Invaliditeitswetten [Invalidity Laws (Repeal Law)]. According to Article 3 thereof, from 1 January 1965 contributions could no longer be paid under the Invalidity Law but wage-earners remained insured against the risk of invalidity until the Incapacity (Insurance) Law came into force on 1 January 1967. It appears from the file that contributions paid before 1 January 1965 were subsequently redeemed.
 - 10 After the Incapacity (Insurance) Law had replaced the Invalidity Law the question arose as to how periods of insurance completed under the Invalidity Law were to be transferred and taken into account after 1 July 1967 in relations with other Member States and for the purpose of calculating pensions *pro rata*. The problem resulted from the fact that affiliation of insured persons to the scheme under the Invalidity Law involved lacunae which made it impossible to establish with precision on the basis of the membership register the periods of insurance completed.

- 11 In order to resolve that question Circular No 315 of the Sociale Verzekeringsraad [Social Security Council] of 8 March 1967 gave instructions, in connection with the application of Regulations Nos 3 and 4 for the taking into account and transference to foreign institutions of periods of insurance completed before 1 July 1967. Those instructions were repeated, in relation to the application of the Community regulations in force at the time, in paragraph 4 of Part H of Annex V to Regulation No 1408/71, which states as follows:

“Application of Netherlands legislation on insurance against incapacity for work

- (a) For the purposes of the provisions of Article 46 (2) of the regulation, periods of paid employment and periods treated as such completed under Netherlands legislation before 1 July 1967 shall also be considered as periods of insurance completed under Netherlands legislation on insurance against incapacity for work.
- (b) The periods to be taken into account in pursuance of the provisions of subparagraph (a) shall be considered as periods of insurance completed under a legislation of the type referred to in Article 37 (1) of the regulation.”

The first three questions

- 12 The questions referred to the Court inquire whether, for the purposes of the application of Article 46 of Regulation No 1408/71 and of Article 15 of Regulation No 574/72:
- (a) a period of employment completed before 1 January 1965 under the Netherlands legislation in force at that time, in respect of which contributions were paid in accordance with that legislation;
- (b) a period of paid employment completed in the Netherlands before 1 July 1967 in respect of which no contributions were paid;

must be regarded as periods of insurance or as periods treated as periods of insurance.

- 13 Article 1 (r) of Regulation No 1408/71 states that the expression “periods of insurance” means periods of contribution or periods of employment as defined or recognized 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.
- 14 Article 1 (j) states that “legislation” means in respect of each Member State statutes, regulations and other provisions and all other implementing measures, present or future, relating to the branches and schemes of social security covered by Article 4 (1) and (2). Article 94 (2) provides that all periods of insurance and, where appropriate, all periods of employment or residence completed under the legislation of a Member State before 1 October 1972 or before the date of the application of the regulation in the territory of that Member State, is to be taken into consideration for the determination of rights to benefits under that regulation.
- 15 The Court has already stated in its judgment of 9 June 1977 (Case 109/76 *Blottner v Nieuwe Algemene Bedrijfsvereniging* [1977] ECR 1141) that the words “present or future” within the meaning of Article 1 (j) must not be interpreted as excluding measures which were no longer in force at the time of the adoption of Regulation No 1408/71 and of the regulation implementing it. The objective of Article 51 of the Treaty would not be attained if the worker lost the status of an insured person within the meaning of the Community regulations solely because of the fact that, when those regulations were adopted, the national legislation in force at the time at which the worker was insured had been replaced by different legislation. It follows from those considerations that the fact that the legislation in force at the time during which the contributions were paid and the employment was performed is no longer in force is irrelevant in relation to the replies to be given to the questions referred to the Court.
- 16 It follows from the wording of paragraph 4 of Part II of Annex V to the regulation, cited above, that the periods referred to in the questions are to be regarded as periods of insurance completed under Netherlands legislation and that they are to be regarded as periods completed under legislation of the type referred to in Article 37 (1) (known as “Type A”). The fact that the contributions paid were subsequently redeemed and that, in respect of the

period from 1 January 1965 to 1 July 1967, no contribution was paid is irrelevant in that connection. The fact that the insurance scheme in force before 1 July 1967 was in fact of Type B is equally irrelevant.

- 17 It follows that the periods referred to by the questions are to be regarded as periods of insurance actually completed under the Netherlands legislation and not as periods not covered by insurance, which are therefore, in certain circumstances, treated as periods of insurance.
- 18 It follows from the foregoing considerations that the reply to the first three questions referred to the Court by the Raad van Beroep, Amsterdam, must be that for the application of Article 46 of Regulation No 1408/71 and of Article 15 of Regulation No 574/72:

- (a) a period of employment completed before 1 January 1965 under the Netherlands legislation in force at that time, in respect of which contributions were paid in accordance with that legislation;
- (b) a period of paid employment completed in the Netherlands before 1 July 1967 in respect of which no contributions were paid;

are to be regarded as periods of insurance and not as periods treated as such.

- 19 In view of the reply given to the first three questions the fourth question has lost its purpose.

Costs

- 20 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Raad van Beroep, Amsterdam, by order of 19 October 1982, hereby rules:

For the purposes of the application of Article 46 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 (Official Journal, English Special Edition 1971 (II), p. 416) and of Article 15 of Regulation (EEC) No 574/72 of the Council of 21 March 1972 (Official Journal, English Special Edition 1972 (I), p. 159):

- (a) a period of employment completed before 1 January 1965 under the Netherlands legislation in force at that time, in respect of which contributions were paid in accordance with that legislation;
- (b) a period of paid employment completed in the Netherlands before 1 July 1967 in respect of which no contributions were paid;

are to be regarded as periods of insurance and not as periods treated as such.

Koopmans

O'Keefe

Bosco

Delivered in open court in Luxembourg on 2 February 1984.

For the Registrar

H. A. Rühl

Principal Administrator

T. Koopmans

President of the First Chamber