OPINION OF MR ADVOCATE GENERAL GULMANN
delivered on 2 February 1994 *

Mr President,
Members of the Court,

1. The Arbeidshof (Higher Labour Court), Ghent, has referred to the Court a number of questions concerning the interpretation of Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. [1] The questions arose in a case brought by Guido Van Poucke against the Belgian authorities for the social insurance of self-employed persons and basically concern the question which social insurance legislation should be applied to a person who, like Mr Van Poucke, is a civil servant in one Member State and at the same time exercises his profession as a self-employed person in another Member State.

2. It appears from the order for reference that Mr Van Poucke is a doctor with the Belgian Armed Forces and in that capacity he is covered by a special insurance scheme for civil servants and, as far as cover of expenses incurred for medical care is concerned, is covered, like other civil servants, by the general sickness and invalidity insurance for employed persons.

3. Since he simultaneously exercises his profession of doctor as a self-employed person in the Netherlands, he was regarded by the competent Belgian social insurance institution as subject to the Belgian social insurance scheme for self-employed persons. That scheme covers family benefits, pensions, including a widow's pension, and sickness and invalidity benefits.

Mr Van Poucke contributed to that insurance scheme from and including the second half of 1982, that is to say from the time when the scope of Regulation No 1408/71 was extended to self-employed persons. [2] Subsequently he lodged an objection against the decision to regard him as liable to pay contributions under that scheme and claimed a refund of contributions of approximately BFR 1 million paid in the period 1982-88. He referred *inter alia* to the fact that insurance as a self-employed person did not entail any advantages for him over and above that which resulted from his insurance as a civil servant.

* Original language: Danish.

1 — Regulation No 1408/71, in the consolidated version annexed to Regulation No 2001/83 (OJ 1983 L 230, p. 6) applicable to this case.

2 — See Regulation No 3795/81 (OJ 1981 L 143, p. 1).

4. The matter was brought before the Arbeidsrechtbank (Labour Court), Bruges, before which Mr Van Poucke claimed that, on its wording, the Belgian insurance scheme for self-employed persons could not be applicable to him because he did not exercise any activity in Belgium as a self-employed person and Regulation No 1408/71 could not, as the competent Belgian insurance institution maintains, lead to the contrary result.

5. Mr Van Poucke claimed, first, that he did not fall within the scope of Regulation No 1408/71.

The basis for that argument is, in particular, the rule in Article 2 (3) of the regulation, which provides that the regulation is to apply to civil servants 'where they are or have been subject to the legislation of a Member State to which this Regulation applies' and Article 4 (4), according to which the regulation is not to apply 'to special schemes for civil servants'.

Mr Van Poucke referred to the fact that, as a civil servant, he is subject to the special scheme for civil servants and is thus not covered by the regulation. The fact that, as far as one form of insurance is concerned, namely medical care expenses, he is covered by one of the insurance schemes to which Regulation No 1408/71 does apply cannot alter that situation.

6. In the event that he should be covered by the regulation, Mr Van Poucke claimed that the regulation contains no choice-of-law rule applicable to his case.

7. The Arbeidsrechtbank, Bruges, did not uphold Mr Van Poucke's claim. The court found on the evidence that he was covered by the regulation because, in respect of medical care expenses, he was covered by a general insurance scheme governed by the regulation. With regard to the choice-of-law issue, the court referred to the rule in Article 13 of the regulation that persons are to be subject to the legislation of a single Member State only. The court found that the proper choice-of-law rule must be the rule in Article 14c that a person who is simultaneously employed in the territory of one Member State and self-employed in the territory of another Member State is to be subject to the legislation of the Member State in the territory of which he is engaged in paid employment. Accordingly, Mr Van Poucke must be covered by the Belgian insurance legislation.

8. Mr Van Poucke appealed against that decision to the Arbeidshof, Ghent, which referred the following questions to the Court:

'1. (a) Must Article 1 (a) (i) and Article 2 (3) of Regulation No 1408/71 be

interpreted as meaning that a professional soldier on active service in Belgium, to whom the medical care provisions of the compulsory sickness and invalidity insurance applicable to employed persons have been extended, ranks among the persons covered by the regulation?

(b) If so, does the Court consider that it may be inferred from the fact that a specific branch of social security, namely medical care under the sickness and invalidity insurance, is governed solely as regards its administration by legislation of a Member State to which Regulation No 1408/71 applies, that persons referred to in Article 2 (3) of Regulation No 1408/71 are or have been in fact subject to the legislation of a Member State to which that regulation applies, as provided for in Article 2 (3) aforesaid?

(c) Should the reply to questions (a) and (b) be in the affirmative, must the word "where" in Article 2 (3) of Regulation No 1408/71 be interpreted as meaning that the regulation is applicable to the persons referred to therein only as regards the legislation of a Member State to which that regulation applies?

2. Must Article 13 (2) (d) and Article 14c of Regulation No 1408/71 be interpreted as meaning that the employment as a civil servant of a person falling within the scope of the regulation is to be treated as activities as a person "employed" for the purposes of the application of Article 14c.

3. Must Title II of Regulation No 1408/71, including Article 14c thereof, be interpreted as meaning that the fact that a person who ranks among the persons covered by the regulation in respect of his activities as a person "employed", on account of which he is insured only for a single risk (in this case medical care under the sickness and invalidity insurance) is obliged with regard to his activities as a self-employed person to pay insurance premiums only in respect of the same risk, although the applicable national legislation provides for compulsory and indivisible insurance for several risks.'

9. Only the Commission has submitted observations to the Court. The Commis-

sion's view and arguments are essentially along the same lines as the Arbeidsrechtbanks are stated to be. A person in Mr Van Poucke's position is covered by the regulation and therefore the regulation's choice-of-law rules are applicable, including the principle that the person in question is subject to the legislation of a single Member State only (Article 13). The provision that indicates which legislation that should be is Article 14c, from which it ensues that a person in Mr Van Poucke's position is covered in all respects by the Belgian insurance scheme for self-employed persons.

10. In introduction, it is worth noting that the unstated premiss of the case, as it is submitted to the Court, is that only Mr Van Poucke's affiliation to the Belgian insurance scheme with regard to cover for medical care expenses is capable of bringing him within the scope of application of the regulation. It is thus accepted that Mr Van Poucke's activity as a self-employed doctor in the Netherlands is not relevant in that respect. That assumption is presumably based on the fact that Mr Van Poucke would not be covered by the Netherlands insurance scheme, since that links insurance obligations to a fixed address and Mr Van Poucke resides in Belgium. Since, under Article 2 (1), the regulation is only to 'apply to employed or self-employed persons who are or have been subject to the legislation of one or more Member States' Mr Van Poucke cannot be covered by the regulation by that means.

11. That presumption cannot, however, be upheld after the judgment of the Court of 13 October 1993 in Case C-121/92 *Zinnecker* and there are therefore grounds for considering whether the Court should decline to reply to the question specifically formulated on the scope of application of the regulation. In view of the fact that the questions were referred to the Court before the *Zinnecker* judgment was delivered and that that judgment, as will become clear below, resolves the issue before national court, I would suggest that the Court rule on the question of the persons covered by the regulation in the light of the *Zinnecker* judgment.

12. That case concerned a situation where a self-employed person, Mr Zinneker, exercised his activity both in the Netherlands and in Germany. When Regulation No 1408/71 was extended to cover self-employed persons in 1982, the competent Netherlands insurance institution decided that he should pay contributions under Netherlands law in respect of his activity in the Netherlands. Mr Zinnecker was resident in Germany, where he was not covered by the insurance scheme for self-employed persons, since that was voluntary and he had not joined the scheme. He claimed that he was not covered either by the Netherlands insurance scheme, because he did not fulfil the requirement under Netherlands law of residence in the Netherlands in order to be covered by the scheme. The question was thus whether, in those circumstances, he was

covered by Regulation No 1408/71. The Court of Justice stated in paragraphs 12, 13 and 14:

'It must be concluded in this connection that Annex I, I, concerning the Netherlands, provides that any person pursuing an activity or occupation without a contract of employment is to be considered a self-employed person within the meaning of Article 1 (a) (ii) of the Regulation. The provision does not, therefore, indicate that the person in question must be resident in the Netherlands in order to have the status of a self-employed person.

Accordingly, despite the fact that he does not fulfil the residence requirement of the Netherlands legislation, Mr Zinnecker must be regarded as a self-employed person covered by the regulation *ratione personae*.

The consequence of that conclusion is that there is no need to examine whether Mr Zinnecker is also subject to the German legislation.'

13. The Court accordingly took the view that under the regulation's choice-of-law rules Mr Zinnecker was covered by Netherlands or German law. It referred to Article 14a (2), according to which a person normally self-employed in the territory of two or more Member States is to be subject to the legislation of the Member State in whose territory he resides, and concluded that a person in Mr Zinnecker's position was covered by German legislation.

14. A person in Mr Van Poucke's situation is thus, purely on the ground of his self-employed activity in the Netherlands, covered by the regulation's scope of application.

15. For the sake of completeness, I should, however, point out that in my view and on the grounds advanced by the Commission, Mr Van Poucke would also be covered by the regulation as a result of his affiliation to the general Belgian sickness insurance scheme.

16. The question remains, accordingly, of which legislation is applicable to Mr Van Poucke under the choice-of-law rules to be found in Title II of the regulation.

17. With a single exception, which is not relevant in a case such as this, the system of the regulation is, as stated, that persons who are covered by the regulation are to be subject to the legislation of a single Member State only. That precludes Mr Van Poucke being covered by both Belgian and Netherlands legislation.

18. None of the choice-of-law rules in the regulation expressly states the choice of law in a situation where a person is in paid employment as a civil servant in one State and is self-employed in another.

The two rules which are most pertinent in determining the choice of law are Article 13 (2) (d) and Article 14c (a).

The first provision states: 'Subject to Articles 14 to 17: (d) civil servants and persons treated as such shall be subject to the legislation of the Member State to which the administration employing them is subject.'

The second of the said provisions is worded as follows: 'A person who is employed simultaneously in the territory of one Member State and self-employed in the territory of another Member State shall be subject: (a) to the legislation of the Member State in the territory of which he is engaged in paid employment, subject to subparagraph (b) ...'.

19. Whether the first or the second provision is applied, the result in this case will be that Mr Van Poucke is subject to Belgian legislation.

The Commission refers to the fact that normally it is not significant whether one or another choice-of-law rule is applied and considers that the choice of law in this case should be determined on the basis of Article 14c (a).

Application of that provision presupposes that a civil servant within the meaning of the provision is regarded as a person who is in paid employment. The Commission refers to the fact that a civil servant under the system of the Treaty is principally regarded as an employee, that is to say a person in paid employment. If that was not the case, the exception from the Treaty's general rule on freedom of movement for workers contained in Article 48 (4) with regard to persons employed in the public service would not have been necessary.

I support the Commission's view on that point.

20. It is worth pointing out that it is laid down in Article 14d that a person referred to in Article 14c (1) (a) 'shall be treated, for the purposes of application of the legislation laid down in accordance with these provisions, as if he pursued all his professional activity or activities in the territory of the Member State concerned'.

It therefore follows from the regulation that in relation to Belgian legislation Mr Van Poucke should be treated as if he were self-employed in Belgium. If it follows from Belgian law that a civil servant who is also self-employed is liable to pay contributions to the Belgian insurance institution for self-employed persons, it is a natural consequence of the regulation that on the ground of his self-employed activity in the Netherlands Mr Van Poucke should he treated in the same way.

On the other hand it is clear that a self-employed activity in the Netherlands cannot entail Mr Van Poucke's being subject to more extensive liability to pay contributions than he would have been if he had been self-employed in Belgium. [3]

Conclusion

21. I therefore suggest that the Court should reply to the questions referred to it as follows:

(1) Regulation No 1408/71 should be interpreted as meaning that a person who is a civil servant in Belgium and resident there and is simultaneously self-employed in the Netherlands is covered by the regulation;

(2) under the choice-of-law rules contained in the regulation it follows that the legislation applicable to such a person is the Belgian legislation.

3 — See on this point the judgment in Case 143/87 *Stanton* [1988] ECR 3877 and Joined Cases 154/87 and 155/87 *Wolf* [1988] ECR 3897.