

JUDGMENT OF THE COURT (Sixth Chamber)  
12 May 1989 \*

In Case 388/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Centrale Raad van Beroep (Central Labour Council), Utrecht (Netherlands), for a preliminary ruling in the proceedings pending before that court between

**Bestuur van de Nieuwe Algemene Bedrijfsvereniging** (Board of the New General Professional and Trade Association), Amsterdam,

and

**W. F. J. M. Warmerdam-Steggerda**, residing in Arnhem,

on the interpretation of certain provisions of Regulation (EEC) 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),

THE COURT (Sixth Chamber)

composed of: T. Koopmans, President of Chamber, G. F. Mancini, C. N. Kakouris, F. A. Schockweiler and M. Diez de Velasco, Judges,

Advocate General: W. Van Gerven

Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

W. F. J. M. Warmerdam-Steggerda, the respondent in the main proceedings, by M. Voets, Advocaat and Procureur, Arnhem, in the written procedure,

\* Language of the case: Dutch.

Bestuur van de Nieuwe Algemene Bedrijfsvereniging, the appellant in the main proceedings, by W. M. Levelt-Overmars, Head of the Department for Legal Affairs and Social Insurance at the Gemeenschappelijk Administratiekantoor, in the written procedure, and by F. W. M. Keunen in the oral procedure,

the Government of the Kingdom of the Netherlands, by E. F. Jacobs, Secretary-General at the Ministry of Foreign Affairs, in the written procedure;

the Commission of the European Communities, by F. Herbert, of the Brussels Bar;

having regard to the Report for the Hearing and further to the hearing on 15 February 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 March 1989,

gives the following

### Judgment

- 1 By order of 8 December 1987, which was received at the Court Registry on 30 December 1987, the Centrale Raad van Beroep, Utrecht, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of certain provisions 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 were raised in a dispute between Mrs W. F. J. M. Warmerdam-Steggerda and the Bestuur van de Nieuwe Algemene Bedrijfsvereniging (Board of the New General Professional and Trade Association, hereinafter referred to as 'the Board') on the question whether the period in which she was engaged in paid employment in the United Kingdom must be taken into account in order to enable her to qualify for unemployment benefits in the Netherlands.

- 3 It is apparent from the documents before the Court that Mrs Warmerdam, a Netherlands national, worked as a pottery maker in Scotland from 17 March to 8 August 1985. She carried on that activity as an employed person and was insured, under English law, against the risk of industrial accident. However, because of her low earnings, she was not insured against other risks covered by the British social security system, in particular the financial consequences of unemployment.
- 4 The reason for Mrs Warmerdam's stay in Scotland was that her husband was undergoing a period of training there. When that training was over, Mrs Warmerdam resigned from her position and, after touring through Scotland, the couple returned to the Netherlands on 30 August 1975. On 1 September 1975 Mrs Warmerdam applied in the Netherlands for registration as a person seeking work and requested the grant of unemployment benefit under the *Werkloosheidswet* (Netherlands Unemployment Law).
- 5 By decision of 3 March 1977, the Board rejected her request on the ground that whilst she had been employed in the United Kingdom she had not been insured against the financial consequences of unemployment and could not therefore be regarded as a worker within the meaning of Articles 1(a) and 71 of Regulation No 1408/71; consequently, she had no right to benefit under the *Werkloosheidswet*.
- 6 Mrs Warmerdam brought an action challenging that decision before the Raad van Beroep, Arnhem, which, by judgment of 8 September 1977, upheld her claim on the ground, first, that Article 1(a) of Regulation No 1408/71 made the status of worker conditional only on the person concerned being insured for one or more contingencies within the meaning of that provision and, secondly, that Article 71(1)(b)(ii) of that regulation simply requires the status of worker in general and not the status of a worker insured against unemployment, so that Mrs Warmerdam, who was insured against the risks of industrial accident in another Member State, should be regarded as a worker within the meaning of the regulation and should be entitled in the Netherlands to unemployment benefit in accordance with Article 71(1)(b)(ii) of Regulation No 1408/71.

- 7 In support of its appeal to the Centrale Raad van Beroep, Utrecht, the Board contended, in the first place, that a person insured for only one branch of social security cannot for that reason be regarded as a worker within the meaning of the regulation for the purposes of all the other branches of social security and, secondly, that Mrs Warmerdam, who had not completed any insurance periods in the United Kingdom, did not satisfy the conditions laid down by the combined provisions of Articles 71(1)(b)(ii), 67 and 1(r) and (s) of Regulation No 1408/71, according to which periods of employment completed in another Member State can be aggregated only in so far as those periods are to be regarded as periods of insurance in that other Member State.
- 8 Taking the view that the dispute raised a question concerning the interpretation of the relevant Community legislation, the Centrale Raad van Beroep, Utrecht, stayed the proceedings and referred the following questions to the Court for a preliminary ruling:
  - ‘(1) Does the fact that a person is only insured, within the meaning of Regulation No 1408/71 as then worded, for one or more contingencies belonging to only one branch of a social security scheme (in this case, the branch mentioned in Article 4(1)(e)) also confer on that person the status of worker which is required in order for a person to enjoy the advantages afforded by Regulation No 1408/71 with regard to another branch of social security (in this case, the branch mentioned in Article 4(1)(g))?’
  - (2) May the competent institution of a Member State, as referred to in Article 67(1) of Regulation No 1408/71 as that regulation was then worded, only take into account, for the purposes of applying the legislation of that Member State, “periods of employment” completed under the legislation of another Member State (which satisfy the condition that they would have been counted as periods of insurance had they been completed under the first-mentioned legislation) if those periods of employment are also defined or recognized by the legislation under which they were completed as periods of insurance for the purposes of the same branch of social security?’
- 9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 10 In the first place, it must be borne in mind that, as the Court has consistently held (see, most recently, the judgment of 28 February 1989 in Case 29/88 *Schmitt v Bundesversicherungsanstalt für Angestellte* [1989] ECR 581), the sole aim of Regulation No 1408/71, in accordance with Article 51 of the EEC Treaty which it is designed to implement, is the aggregation, for the purposes of the conferment and maintenance of entitlement to benefits, and for the calculation thereof, of all the periods taken into consideration by the different bodies of national legislation and that it does not determine the conditions under which those periods are constituted.
- 11 In accordance with the aim laid down by Article 51 of the EEC Treaty, Regulation No 1408/71 has established a system whereby the periods completed by migrant workers under the different laws of the Member States are taken into account, so that those workers may qualify for social security benefits regardless of their place of employment or residence. Under that system, workers who are nationals of Member States and who in the exercise of their right to freedom of movement within the Community have carried on activities covered by a social security scheme in several Member States are thus saved from treatment in the field of social security that is less favourable than if they had carried on the same activities in a single Member State.
- 12 As regards, more particularly, the right to unemployment benefit, that aim has been implemented by Article 67 of Regulation No 1408/71. The second question submitted by the national court concerns the interpretation of paragraph (1) of that article and that question must therefore be considered first.
- 13 Article 67 of Regulation No 1408/71, laying down rules for the aggregation of the periods taken into account for the purposes of the grant of unemployment benefits, draws a distinction between the case in which the legislation administered by the competent institution of a Member State makes entitlement to such benefits subject to the completion of periods of insurance (Article 67(1)) and the case in which such legislation makes that entitlement conditional on the completion of periods of employment (Article 67(2)).
- 14 The national court takes the view that the *Werkloosheidswet* must be regarded as a system which makes the acquisition, retention or recovery of the right to unem-

ployment benefits subject to the completion of periods of insurance. It has therefore submitted to the Court a question on the interpretation of Article 67(1) of Regulation No 1408/71.

- 15 In that question, the national court seeks, in substance, to ascertain whether Article 67(1) of Regulation No 1408/71 makes the aggregation, by the competent institution of a Member State, of periods of employment completed in another Member State subject to the condition that such periods should be regarded as periods of insurance for the same branch of social security by the legislation under which they were completed.
- 16 In order to answer that question, it must be borne in mind first of all that Article 67(1) of Regulation No 1408/71 provides that the competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of insurance periods is to take into account, to the extent necessary, periods of insurance or employment completed under the legislation of any other Member State, as though they were periods of insurance completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as periods of insurance had they been completed under that legislation.
- 17 It follows from the wording of that provision that if the legislation of the Member State within whose territory the competent institution is situated makes entitlement to unemployment benefits dependent on the completion of periods of insurance, the periods of insurance completed in any other Member State must be taken into account in the Member State in which the benefits were applied for, as though they were periods of insurance completed under the legislation of the latter Member State. In the same case, periods of employment completed without affiliation to a scheme of unemployment insurance under the legislation of any other Member State must be taken into account in the Member State in which the benefit was applied for, as though they were periods of employment completed under the legislation of the latter State, provided that, according to the law of that State, those periods of employment would have been regarded as periods of insurance.

- 18 Article 71(1)(b)(ii) of Regulation No 1408/71, which gives a worker the option of making himself available for work to the employment services of the Member State in which he habitually resides and to apply in that State for unemployment benefits in accordance with the legislation of that State as though he had been last employed there, does not, where the conditions for its application are fulfilled, have any effect on the aforesaid rules of aggregation, which determine the conditions in which account must be taken of periods completed by a migrant worker in Member States other than that in which the competent institution responsible for deciding whether benefits are to be granted is situated.
- 19 In that regard, it must be borne in mind that the term 'periods of insurance' is defined in Article 1(r) of Regulation No 1408/71 as meaning periods of contribution or periods of employment recognized by the legislation under which they were completed or regarded by the said legislation as equivalent to periods of insurance. It follows that, in the case of entitlement to unemployment benefits, the term 'periods of insurance' must be understood as referring not only to periods in which contributions to an unemployment insurance scheme were paid but also to periods of employment considered by the legislation under which they were completed as equivalent to periods of insurance, that is to say periods in which insurance cover by such a scheme is guaranteed.
- 20 The term 'periods of employment' defined in Article 1(s) of Regulation No 1408/71 thus covers only periods of work which, according to the legislation under which they were completed, are not regarded as periods conferring entitlement to affiliation to a scheme providing unemployment benefits.
- 21 If, as appears to be the case in the main proceedings, it is necessary to apply Article 71(1)(b)(ii) of Regulation No 1408/71, the competent institution is not bound, pursuant to Article 67(1) of that regulation, to take into account such periods of employment completed in another Member State unless, according to the legislation which it administers, those periods are to be regarded as periods of

affiliation, that is to say periods affording cover under an unemployment insurance scheme.

22 The answer to the second question submitted by the national court must therefore be that Article 67(1) of Regulation No 1408/71 does not make the aggregation, by the competent institution of a Member State, of periods of employment completed in another Member State subject to the condition that such periods should be treated as periods of insurance for the same branch of social security by the legislation under which they were completed.

23 In view of the answer given to the second question, the first question is redundant.

#### Costs

24 The costs incurred by the Government of the Kingdom of the Netherlands and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions submitted to it by the Centrale Raad van Beroep, Utrecht, by order of 8 December 1987, hereby rules:

**Article 67(1) 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 does not make the aggregation, by the competent**

**institution of a Member State, of periods of employment completed in another Member State subject to the condition that such periods should be treated as periods of insurance for the same branch of social security by the legislation under which they were completed.**

Koopmans

Mancini

Kakouris

Schockweiler

Diez de Velasco

Delivered in open court in Luxembourg on 12 May 1989.

J.-G. Giraud

T. Koopmans

Registrar

President of the Sixth Chamber