

JUDGMENT OF THE COURT (Sixth Chamber)

3 May 1990 *

In Case C-2/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the Centrale Raad van Beroep (Court of last instance in social security matters), Utrecht, for a preliminary ruling in the proceedings pending before that court between

Bestuur van de Sociale Verzekeringsbank, as successor to the Raad van Arbeid, Eindhoven,

and

Heirs and/or successors in title to G. J. Kits van Heijningen,

on the interpretation of Article 13(2)(a) and Article 73(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416), as amended,

THE COURT (Sixth Chamber)

composed of: C. N. Kakouris, President of Chamber, F. A. Schockweiler, G. F. Mancini, T. F. O'Higgins and M. Díez de Velasco, Judges,

Advocate General: G. Tesauró

Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

the Sociale Verzekeringsbank, by B. H. ter Kuile and E. H. Pijnacker Hordijk, of the Hague and Brussels Bars;

* Language of the case: Dutch.

the Netherlands Government, by H. J. Heinemann, Secretary-General *ad interim* at the Ministry of Foreign Affairs;

the Commission of the European Communities, by B. H. Drijber, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral argument submitted by the Sociale Verzekeringsbank, represented by E. H. Pijnacker, by the Netherlands Government, represented by J. W. de Zwaan, acting as Agent, and by the Commission, at the hearing on 6 February 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 February 1990,

gives the following

Judgment

- 1 By order of 28 December 1988, which was received at the Court on 5 January 1989, the Centrale Raad van Beroep referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions on the interpretation of Articles 13(2)(a) and 73(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416), as amended.
- 2 Those questions arose in proceedings between the Board of Management of the Sociale Verzekeringsbank, as successor to the Raad van Arbeid, Eindhoven, and the heirs and/or successors in title to G. J. Kits van Heijningen, concerning the granting of family allowances to the latter pursuant to the Algemene Kinderbijslagwet (General Law on child allowances, hereinafter referred to as 'the law').

- 3 Mr Kits van Heijningen, who resided in Belgium, worked for Philips NV in Eindhoven until 1 November 1983. While working for Philips, he also worked as a teacher at a Netherlands educational institution where he taught for two hours a day on Mondays and Saturdays. He returned to Belgium after each working day. On 1 November 1983 Mr Kits van Heijningen retired from Philips. However, he continued teaching as before.

- 4 Mr Kits van Heijningen claimed child allowances from the Netherlands authorities pursuant to the law, for the first quarter of 1984 in respect of his two children, who were studying. By a letter of 24 July 1984, the Raad van Arbeid, Eindhoven, rejected that claim. In support of its decision the Raad van Arbeid maintained that under Article 11(1) of the law a person is entitled to child allowances in a calendar quarter only if he is insured on the first day of that quarter. According to the Raad van Arbeid, Mr Kits van Heijningen was insured only on the days when he was teaching. As the first day of the first quarter of 1984 was not a Monday or a Saturday, Mr Kits van Heijningen did not, according to the Raad van Arbeid, meet the condition laid down in Article 11(1) of the law.

- 5 Mr Kits van Heijningen lodged an application against that decision with the Raad van Beroep (Social Security Court), 's-Hertogenbosch, which, by a judgment of 1 July 1985, annulled the decision at issue. The Raad van Arbeid appealed against that judgment to the Centrale Raad van Beroep. The Centrale Raad van Beroep took the view that the dispute raised several questions on the interpretation of Community law and, by an order of 28 December 1988, stayed the proceedings and referred the following questions for a preliminary ruling to the Court of Justice:
 - '(1) Can the activities as a part-time teacher (previously carried out as secondary activities), which a retired worker continues after the start of his retirement for two hours of teaching on each of two days a week, be regarded as effective and genuine activities for the application of the Community rules on the free movement of workers?

 - (2) If so, do those activities — like the earlier principal activities carried out in the territory of a Member State other than that in whose territory the retired worker lives and to which he returns after work on each working day — render the legislation of the former Member State applicable — having

regard to Article 13(2)(a) of Regulation (EEC) No 1408/71 — only on the aforementioned days on which lessons are given or also on the intervening days when no work is performed at all?

- (3) If the answer to Question 1 is no, does the legislation of the Member State in whose territory the former principal activities were last carried out continue to apply pursuant to Article 13(2)(a) even after the date of retirement?
 - (4) If the legislation of the Member State in whose territory the abovementioned activities were or are carried out is applicable even after the date of retirement — having regard to Article 13(2)(a) — can it be said exclusively on the basis of the determination of the applicable legislation pursuant to that provision that residence requirements such as that in the opening words and subparagraph (a) of Article 6(1) of the *Algemene Kinderbijslagwet* (General Law on child allowances) cannot be relied on against the retired worker concerned?
 - (5) If not, can it be said on the basis of Article 73(1) of Regulation No 1408/71 that residence requirements such as that in the opening words and subparagraph (a) of Article 6(1) of the *Algemene Kinderbijslagwet* cannot be relied on against the retired worker concerned?
- 6 Reference is made to the Report for the Hearing for a fuller account of the facts, the course of the procedure and the submissions of the parties, which are mentioned or referred to hereinafter only in so far as is necessary for the reasoning of the Court.

Question 1

- 7 It is evident from the order for reference that by its first question the national court is essentially asking whether Regulation No 1408/71 applies to a person carrying out an activity as an employed person for two hours per day on each of two days per week.

- 8 The persons covered by Regulation No 1408/71 are specified in Article 2 of the regulation. Under Article 2(1), Regulation No 1408/71 applies in particular 'to employed or self-employed persons who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States'.
- 9 The expression 'employed persons' used in Article 2(1) of Regulation No 1408/71 is defined in Article 1(a). It means any person who is insured under one of the social security schemes referred to in Article 1(a) for the contingencies and on the conditions mentioned in that provision.
- 10 There is nothing in Article 1(a) or Article 2(1) of Regulation No 1408/71 which permits certain categories of persons to be excluded from the scope of the regulation on the basis of the amount of time they devote to their activities. Consequently, a person must be considered to be covered by Regulation No 1408/71 if he meets the conditions laid down in Article 1(a) in conjunction with Article 2(1) of the regulation, irrespective of the amount of time which that person devotes to his activities.
- 11 The answer to the first question must therefore be that a person who is employed for two hours per day on each of two days per week is covered by Regulation No 1408/71 if he meets the conditions laid down in Article 1(a) in conjunction with Article 2(1) of that regulation.

Question 2

- 12 As the Court has pointed out on a number of occasions, the provisions of Title II of Regulation No 1408/71, which include Article 13, constitute a complete system of conflict rules (see, in particular, the judgment of 10 July 1986 in Case 60/85 *Luijten v Raad van Arbeid* [1986] ECR 2365). Those provisions are intended not only to prevent the simultaneous application of a number of national legislative systems and the complications which might ensue, but also to ensure that the

persons covered by Regulation No 1408/71 are not left without social security cover because there is no legislation which is applicable to them.

- 13 In order to achieve that objective, Article 13(2)(a) of Regulation No 1408/71 provides that, subject to Articles 14 to 17, 'a person 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 or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State'.
- 14 Article 13(2)(a) makes no distinction between full-time and part-time employment. Moreover, the objective which it pursues would be frustrated if it were to be considered that the legislation of the Member State in question was applicable only during the periods when the person concerned pursued his activity, and not during those periods when he did not.
- 15 Consequently, the reply to the second question must be that Article 13(2)(a) of Regulation No 1408/71 must be interpreted as meaning that a person covered by that regulation who is employed part-time in the territory of a Member State is subject to the legislation of that State both on the days on which he pursues that activity and on the days on which he does not.

Question 3

- 16 Having regard to the answer given to the first question, there is no need to consider the third question.

Question 4

- 17 By its fourth question the national court is asking whether the fact that Article 13(2)(a) of Regulation No 1408/71 specifies which legislation is applicable means that Article 6(1)(a) of the law, which provides that 'an insured person, pursuant to this law, shall be a person who has reached the age of 15 and is a resident' of the Netherlands, may not be relied on against the applicant.

- 18 It is apparent from the order for reference that the purpose of Article 6(1)(a) of the law is to lay down the conditions under which a person is covered by the scheme established by the law.
- 19 The sole purpose of Article 13(2)(a) of Regulation No 1408/71 is to determine the national legislation applicable to persons employed in the territory of a Member State. As such, it is not intended to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme. As the Court has pointed out several times, it is for the legislature of each Member State to lay down those conditions (see, in particular, the judgment of 23 September 1982 in Case 275/81 *Koks v Raad van Arbeid* [1982] ECR 3013).
- 20 However, when the Member States lay down the conditions creating the right or the obligation to become affiliated to a social security scheme, they are under an obligation to comply with the provisions of the Community law in force (see, in particular, the judgment in *Koks*, cited above). In particular, those conditions may not have the effect of excluding from the scope of the legislation at issue persons to whom it applies pursuant to Regulation No 1408/71.
- 21 Article 13(2)(a) of Regulation No 1408/71 expressly provides that a person employed in the territory of one Member State is to be subject to the legislation of that State 'even if he resides in the territory of another Member State'. That provision would have no practical effect if the residence condition laid down by the legislation of the Member State in whose territory the person is employed for affiliation to the insurance scheme which it establishes could be relied on against the persons referred to in Article 13(2)(a). With regard to those persons, the effect of Article 13(2)(a) is to replace the residency condition with a condition based on employment in the territory of the Member State concerned.

- 22 Consequently, the answer to the fourth question must be that the effect of Article 13(2)(a) of Regulation No 1408/71 is that a provision of the applicable national legislation pursuant to which cover by the insurance scheme established by that legislation is conditional on residence in the Member State in whose territory the activity as an employed person is pursued may not be relied on against the persons referred to in Article 13(2)(a).

Question 5

- 23 Having regard to the answer given to the fourth question, there is no need to consider the fifth question.

Costs

- 24 The costs incurred by the Netherlands Government 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 action 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, by order of 28 December 1988, hereby rules:

- (1) A person who is employed for two hours per day on each of two days per week is covered by Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended, if he meets the conditions laid down in Article 1(a) in conjunction with Article 2(1) of the regulation.

- (2) Article 13(2)(a) of Regulation (EEC) No 1408/71 must be interpreted as meaning that a person covered by that regulation who is employed part-time in the territory of a Member State is subject to the legislation of that Member State both on the days on which he pursues that activity and on the days on which he does not.
- (3) The effect of Article 13(2)(a) of Regulation (EEC) No 1408/71 is that a provision of the applicable national legislation pursuant to which cover by the insurance scheme established by that legislation is conditional on residence in the Member State in whose territory the activity as an employed person is pursued may not be relied on against the persons referred to in Article 13(2)(a).

Kakouris

Schockweiler

Mancini

O'Higgins

Diez de Velasco

Delivered in open court in Luxembourg on 3 May 1990.

J.-G. Giraud

C. N. Kakouris

Registrar

President of the Sixth Chamber