JUDGMENT OF THE COURT (Second Chamber)

3 April 2008 *

In Case C-331/06,

REFERENCE for a preliminary ruling under Article 234 EC, from the Rechtbank te Amsterdam (Netherlands), made by decision of 27 July 2006, received at the Court on 31 July 2006, in the proceedings

K.D. Chuck

v

Raad van Bestuur van de Sociale Verzekeringsbank,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, L. Bay Larsen, K. Schiemann, P. Kūris (Rapporteur) and J.-C. Bonichot, Judges,

* Language of the case: Dutch.

Advocate General: J. Mazák,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 September 2007,

after considering the observations submitted on behalf of:

— the Raad van Bestuur van de Sociale Verzekeringsbank, by E. Pijnacker Hordijk and S.J.H. Evans, advocaten,

— the Netherlands Government, by H. Sevenster, acting as Agent,

— the Greek Government, by K. Georgiadis, Z. Chatzipavlou and O. Patsopoulou, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by W. Ferrante, avvocato dello Stato,

— the Commission of the European Communities, by V. Kreuschitz and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 January 2008

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 48 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 (OJ, English Special Edition 1971 (II), p. 416), as amended and updated by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 (OJ 2004 L 100, p. 1); 'Regulation No 1408/71'.

2 The reference has been made in the course of proceedings between Mr Chuck and the Raad van Bestur van de Sociale Verzekeringsbank (Management Board of the Social Insurance Bank; 'the SVB') regarding the latter's refusal to take into account the social security contributions paid by Mr Chuck in Denmark on the ground that he was not resident in a Member State when he applied for a pension.

Legal context

Community legislation

3 Article 2 of Regulation No 1408/71 sets out the persons covered by that regulation and provides, in paragraph 1 thereof:

'This Regulation shall apply to employed or self-employed persons and to students 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 or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors.'

4 Under Article 10 of Regulation No 1408/71, headed 'Waiving of residence clauses — Effect of compulsory insurance on reimbursement of contributions':

'1. Save as otherwise provided in this Regulation, invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.

…'

5 Under Article 48 of Regulation No 1408/71, headed 'Periods of insurance or of residence of less than one year':

'1. Notwithstanding Article 46(2), the institution of a Member State shall not be required to award benefits in respect of periods completed under the legislation it administers which are taken into account when the risk materialises, if:

— the duration of the said periods does not amount to one year,

and

— taking only these periods into consideration, no right to benefit is acquired by virtue of the provisions of that legislation.

2. The competent institution of each of the Member States concerned shall take into account the periods referred to in paragraph 1, for the purposes of applying Article 46(2) excepting subparagraph (b).

3. If the effect of applying paragraph 1 would be to relieve all the institutions of the Member States concerned of their obligations, benefits shall be awarded exclusively under the legislation of the last of those States whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with Article 45(1) to (4) had been completed under the legislation of that State.'

6 Regulation (EEC) No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 (OJ, English Special Edition 1972 (I), p. 159; 'the implementing regulation'), provides, in Article 36(3) thereof:

'Where a claimant resides in the territory of a State which is not a Member State, he shall submit his claim [for old-age benefits] to the competent institution of that Member State to whose legislation the employed or self-employed person was last subject.'

National legislation

7 Article 6(1) of the Law on old-age pensions (Algemene Ouderdomswet, 'the AOW') is worded as follows:

'Insured persons for the purpose of these provisions are,

(a) residents and,

(b) non-residents subject to income tax on salaried occupational activities carried out in the Netherlands, who are not yet 65.'

8 Under Article 7 of the AOW:

'Those persons:

(a) who are 65 or over, and

(b) who, in accordance with this law, were insured during the period from the date of their 15th birthday to the date of their 65th birthday inclusive

are entitled to an old-age pension in accordance with the provisions of this law.'

The dispute in the main proceedings and the question referred for a preliminary ruling

9 Mr Chuck, a United Kingdom national, worked and was resident in the Netherlands from 1 September 1972 to 1 April 1975 and from 1 January 1976 to 31 December 1977. In the nine months between those two periods the applicant worked in Denmark, where he paid social security contributions. Since 1 January 1978 he has been resident in the United States. On reaching the age of 65, he submitted a claim for an old-age pension to the SVB.

10 The SVB granted Mr Chuck an old-age pension with a supplement as from December 2000, reduced by 90% in respect of the 45 years during which he had not been insured. For the calculation of the amount of the pension the SVB did not take account of the periods of insurance completed in Denmark, on the ground that Mr Chuck no longer resided in a Member State and, according to the SVB, could not claim the benefit of Article 48 of Regulation No 1408/71.

11 Mr Chuck appealed against that decision to the SVB, which rejected his appeal by a decision of 2 January 2002. Mr Chuck then brought an action before the Rechtbank te Amsterdam (Amsterdam District Court).

12 He submits that, pursuant to Article 48 of Regulation No 1408/71, the periods of insurance completed in Denmark should have been taken into account in the calculation of periods of insurance. The fact that he was not resident in a Member State when he made his claim should not preclude the application of Article 48 of that regulation.

13 On 27 July 2006, the Rechtbank te Amsterdam decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where a worker is resident outside the [European] Community on the date on which he reaches pensionable age, should Article 48 of … Regulation [No 1408/71] be applied in the same way as in a case where the worker concerned is resident in the territory of the Community?'

The question referred

14 By its question, the referring court asks, in essence, whether Article 48(2) of Regulation No 1408/71 requires the competent institution of the last Member State in which a worker who is a national of a Member State resided to take into account, in calculating the old-age pension of that worker, who, when he submits his pension claim, is resident in a non-Member State, of the periods worked in another Member State under the same conditions as if that worker was still resident in the territory of the Community.

Observations submitted to the Court

15 The SVB submits that Regulation No 1408/71 guarantees rights and benefits only to workers moving within the Community and that it cannot be inferred from the Court's case-law that persons falling under the scope of the Regulation can automatically derive rights from it.

16 Furthermore, it would be required to apply Article 48 of that regulation in the case of a claimant who resided outside the Community only if the benefits to be aggregated were exportable on the basis of Article 10 of the Regulation. It contends that Article 10 guarantees the exportability of a pension only to another Member State. This implies that the Danish authorities are not obliged to export a pension to a non-Member State, so it would be illogical if Article 48 obliged the Netherlands authorities to take into account the social security contributions made by Mr Chuck in Denmark.

17 The SVB asserts, moreover, that since Community law does not provide for such benefits to be exported, it is a fortiori not possible to derive from it the right to export the aggregated periods of contribution on the basis of Article 48(2) of Regulation No 1408/71. That conclusion is confirmed by Article 7 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

18 The Netherlands Government submits, by way of argument in favour of an answer in the affirmative to the question referred, that Article 42 EC provides for a system that guarantees workers' social security rights in order to encourage their freedom of movement. That article lays down, for that purpose, first, a system of aggregation of all insurance periods beyond the national territory of each Member State which applies to the acquisition and the retention of rights to benefits and, secondly, the obligation to pay benefits throughout the Community. Furthermore Article 36(3) of the implementing regulation lays down the procedure by which persons not resident in one of the Member States may claim an old-age pension.

19 By way of argument in favour of an answer in the negative to that question, the Netherlands Government submits that Regulation No 1408/71 is designed to facilitate freedom of movement for workers and their families within the Community. That view is supported by the wording of Article 42 EC, which states that the Council of the European Union is to adopt such measures as are necessary to ensure payment of benefits to persons resident in the territories of Member States.

20 Lastly the Netherlands Government states that, if the old-age pension must be calculated in accordance with Article 48(2) of Regulation No 1408/71, this does not mean that it is exportable to a non-Member State to be paid there. That question is not addressed by that regulation and is exclusively subject to national legislation.

21 The Commission of the European Communities proposes that the answer should be that, when a worker resides outside the Community at the time when he reaches the age of retirement, Article 48 of the Regulation must be applied in the same way as if the worker resided on the territory of the Community. For the purpose of the application of that article it is not decisive whether the place of residence is within the Community or outside it.

22 In this connection, it submits that, under the Court's case-law, the sole objective of Regulation No 1408/71 is to ensure coordination between the national schemes. It thus allows different national schemes to continue to exist, giving rise to separate claims against different national social security institutions.

23 Furthermore, it is evident that what matters for the application of those rules is the relationship between a worker and the social security system of a particular Member State under which he has been insured for a given period, rather than the place where an occupational activity is carried out.

24 The Commission concludes that, if the SVB's reasoning were to be followed, that would deprive the principle of aggregation provided for by Regulation No 1408/71 of much of its effectiveness. None the less, no provision of Community law requires social benefits actually to be paid in non-Member States. The detailed rules for the payment of those benefits continue to be governed by national law.

25 The Greek and Italian Governments essentially share the Commission's view. The Greek Government also draws attention to the importance of Article 36 of the implementing regulation, which refers to the situation of a claimant who is not resident in the Community when he claims benefits.

The Court's answer

26 The Court has held that Article 51 of the EEC Treaty (subsequently Article 51 of the EC Treaty, and now, after amendment, Article 42 EC) leaves in being differences between the Member States' social security schemes and, consequently, in the rights of persons working in the Member States (Case C-227/89 *Rönfeldt* [1991] ECR I-323, paragraph 12).

27 Regulation No 1408/71 does not set up a common scheme of social security, but allows different national social security schemes to exist and its sole objective is to ensure the coordination of those schemes (Case 21/87 *Borowitz* [1988] ECR 3715, paragraph 23). It allows different schemes to continue to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by Community law (Case 100/78 *Rossi* [1979] ECR 831, paragraph 13).

28 The Court has also held that regulations adopted for the implementation of Article 51 of the Treaty must be interpreted in the light of the objective pursued by that article, which is the establishment of the greatest possible freedom of movement for migrant workers within the Community (see Case 10/78 *Belbouab* [1978] ECR 1915, paragraph 5, and Case C-105/89 *Buhari Haji* [1990] ECR I-4211, paragraph 20).

29 It is common ground that Regulation No 1408/71 does not expressly address the situation at issue in the main proceedings, concerning the effect of the place of residence of the person insured when he claims an old-age pension on the calculation of his pension rights in respect of periods worked in various Member States.

30 Article 2 of that regulation requires only, for its application, the fulfilment of two conditions: the worker must be a national of one of the Member States (or be a stateless person or refugee residing within the territory of one of the Member States) and be or have been subject to the legislation of one or several Member States.

31 As regards Article 10 of Regulation No 1408/71, it prohibits residence clauses only between Member States.

32 However, as the Advocate General notes in point 44 of his Opinion, Regulation No 1408/71 seeks to achieve the objective set out in Article 51 of the Treaty by preventing the possible negative effects that the exercise of the freedom of movement for workers could have on the enjoyment, by workers and their families, of social security benefits, in particular so far as concerns the career of migrant workers who have contributed to various social security systems, and thus to provide workers with legal certainty that they will retain the pension rights deriving from their contributions to pension systems in a similar way to a worker who has not exercised his right to freedom of movement within the Community.

33 In dealing with the aggregation of insurance periods of less than one year completed under the legislation of a given Member State with insurance periods completed in other Member States, Article 48 of Regulation No 1408/71 contributes to guaranteeing freedom of movement for workers between the Member States.

34 Consequently, Article 48, the application of which, moreover, does not depend on the place of residence of the worker when he claims an old-age pension, cannot be interpreted as meaning that the mere fact that he has moved his place of residence to a non-Member State will call into question his right to have his old-age pension calculated in accordance with the rules set out in that article.

35 In addition, it follows from the wording of Article 36(3) of the implementing regulation, first, that an old-age pension claim can be submitted by a non-resident in a Member State and, secondly, it must be addressed to a competent institution of the Member State to whose legislation the claimant was last subject. The Community legislature has indeed, therefore, envisaged a situation such as that of Mr Chuck, as a resident of a non-Member State and a former worker who has paid contributions in several Member States.

36 It follows from the foregoing that the principle of the aggregation of periods worked in Member States as set out in Article 48(2) of Regulation No 1408/71 must be applied to a worker in a situation such as that of Mr Chuck for the purpose of calculating his old-age pension.

37 Moreover, it should be pointed out that the last Member State concerned is not subject to an obligation to pay that pension in a non-Member State.

38 The Court, following the example of the Advocate General, would point out that, while Article 10 of Regulation No 1408/71 introduces a binding right to have a pension paid in any Member State, neither that regulation nor any provision of Community law requires Member States to pay pensions in non-Member States. It follows that the detailed arrangements for paying such an old-age pension remain subject to the provisions of the national law of the Member State of the institution responsible for paying the pension.

39 In the light of the foregoing considerations, the answer to the question referred must be that Article 48(2) of Regulation No 1408/71 requires the competent institution of the last Member State in which a worker who is a national of a Member State resided to take into account, in the calculation of the old-age pension of that worker, who, when he submits his pension claim is resident in a non-Member State, of the periods worked in another Member State under the same conditions as if that worker still resided in the Community.

Costs

40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 48(2) 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, as amended and updated by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 , requires the competent institution of the last Member State in which a worker who is a national of a Member State resided to take into account, in calculating the old-age pension of that worker, who, when he submits his pension claim, is resident in a non-Member State, of the periods worked in another Member State under the same conditions as if that worker still resided in the European Community.

[Signatures]