JUDGMENT OF THE COURT (Third Chamber)
12 June 1986 *

In Case 302/84

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

A. A. Ten Holder

and

Nieuwe Algemene Bedrijfsvereniging

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,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

the defendant in the main proceedings, by W. M. Levelt-Overmars, in the written procedure, and by F. W. M. Keunen, acting as Agent, in the oral procedure,

the Netherlands Government, by I. Verkade, Secretary General of the Ministry of Foreign Affairs, and

* Language of the Case: Dutch.

the Commission of the European Communities, by J. Griesmar, acting as Agent, in the written procedure, and by F. Herbert, Advocate, in the oral procedure,

after hearing the Opinion of the Advocate General delivered at the sitting on 27 February 1986,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By order of 20 November 1984, which was received at the Court of Justice on 21 December 1984, the Raad van Beroep [Social Security Court], 's-Hertogenbosch, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions concerning 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).

2 Those questions arose in a dispute between Mrs Ten Holder, the plaintiff in the main proceedings, and the Nieuwe Algemene Bedrijfsvereniging [New General Professional and Trade Association], the defendant in the main proceedings, concerning the defendant's refusal to grant the plaintiff a benefit under the Nederlandse Algemene Arbeidsongeschiktheidswet [Netherlands General Law on Incapacity for Work], hereinafter referred to as 'the General Law'.

3 As is clear from the order for reference, the plaintiff, who had worked in Belgium, Germany and the Netherlands as an employed person, was last employed in Germany where she worked from 1 January 1975 until April 1975. As she developed shoulder trouble, she became incapacitated for work in April 1975 and consequently received from then on sickness benefits under German legislation. On 1 August 1975 she returned to live in the Netherlands. On 15 October 1976

the German sickness benefits were discontinued on the ground that the maximum period for their payment had expired.

4 The fact that the plaintiff was in receipt of sickness benefits in Germany on 1 October 1976 prompted the defendant's refusal to grant her a benefit under the General Law. That refusal was based on Article 2 (1) (c) of the Royal Decree of 19 October 1976, which has retroactive effect from 1 October 1976 and is founded on the provisions of the General Law; according to that provision, an insured person, within the meaning of the General Law, does not include 'a Netherlands resident who receives under foreign legislation a similar benefit within the meaning of Article 1 (1) (e) . . . '.

5 The Raad van Beroep sought in the first place to ascertain which legislation was applicable in this case, in the light of Article 13 (2) (a) of Regulation No 1408/71, which provides that a person employed in the territory of a Member State is to be subject to the legislation of that State even if he resides in the territory of another Member State. The Raad van Beroep was convinced that that provision was applicable not only to a person currently employed, but also to a person last employed, in the territory of a Member State. However, the national court was uncertain whether such a person continued to be subject to the legislation of that State even though a year and a half had elapsed since the termination of the activity and of the employment relationship and since the award of the sickness benefits. That is the issue with which the first of the questions submitted for a preliminary ruling is concerned.

6 Next, the Raad van Beroep considered that, from the standpoint of Netherlands law alone, the plaintiff could be regarded as insured on 1 October 1976 under the General Law. The national court was therefore confronted with the question whether the fact that a person was subject to the legislation of the Member State on whose territory he was last employed, by virtue of Article 13 (2) (a) of Regulation No 1408/71, precluded that person from being simultaneously insured under another Member State's legislation alone, in this case the General law, even though the person concerned would thus be deprived of a right to benefits acquired under that other Member State's legislation alone.

7 However, the Raad van Beroep considered that, even if Article 13 did not preclude the application of Netherlands legislation alone, the payment of benefits to the

plaintiff under the General Law could be refused on the ground that she had not been continuously resident in the Netherlands from 1 January 1975 to 1 October 1976, as required by Article 91 (c) of the General Law, which provides as follows:

'An insured person shall be entitled to invalidity benefits as specified in Articles 89 and 90 provided that: (a) he is a Netherlands national; (b) he was living in the Netherlands on 1 October 1976; and (c) either (1) he lived in the Netherlands between 1 January 1975 and 1 October 1976; or (2) he has lived in the Netherlands, Surinam or the Netherlands Antilles since 1 October 1970 for a period of six years, whether continuously or otherwise.'

The Raad van Beroep thus raised the question whether that condition of residence was compatible with Community law.

8 In those circumstances, the Raad van Beroep referred to the Court the following questions for a preliminary ruling:

'(1) Does a worker who, in connection with the pursuit of an activity in the territory of a Member State, receives sickness benefits under the legislation of that Member State, and who did not go to work in the territory of another Member State while he was in receipt of those benefits, continue to be subject to that legislation pursuant to Article 13 (2) (a) of Regulation (EEC) No 1408/71 even though almost a year and a half has elapsed since the award of those sickness benefits and the termination of that activity (and of the employment relationship)?

(2) Does the determination of the legislation of a specific Member State as the legislation applicable to a specific worker pursuant to Article 13 (2) (a) of Regulation No 1408/71 mean that the worker cannot simultaneously be regarded as insured under the national law of another Member State alone, pursuant to the legislation of that other Member State concerning invalidity benefits, with the result that the operation of Community law deprives him of invalidity benefits to which he is entitled under the national legislation of that other Member State alone?

(3) May requirements relating to residence such as those provided for in Article 91 (c) of the Netherlands General Law on Incapacity for Work be relied upon as against a migrant worker within the Community?'

First question

9 In their observations the Netherlands Government, the Nieuwe Algemene Bedrijfsvereniging and the Commission consider that the first question should be answered in the affirmative.

10 The Netherlands Government considers that a worker who is subject to the legislation of a Member State by virtue of Article 13 (2) (a) of Regulation No 1408/71 must remain subject to the legislation of that State even if he is not carrying on an activity at the time when he applies for the award of benefits; it maintains that that view accords with the principles laid down by the Court in its judgment of 12 January 1983 in Case 150/82 (*Coppola*, [1983] ECR 43, paragraph 11 of the decision). That legislation, it contends, should continue to apply to a worker who is in receipt of sickness benefits regardless of the fact that over a year and a half has elapsed since he was awarded those benefits and ceased carrying on the activity.

11 The Nieuwe Algemene Bedrijfsvereniging considers that, in order to avoid the disadvantages which could arise from either a literal or an excessively broad interpretation of Article 13 (2) (a) of Regulation No 1408/71, the rule laid down by that provision should apply to a worker who temporarily interrupts his work, on grounds of sickness or in order to take leave, and to a worker who is in receipt of sickness benefits, in view of the nature of the link existing between such benefits and the activities previously carried on, a link which stems both from the purpose of those benefits and from the manner in which they are calculated.

12 The Commission also suggests that the first question should be answered in the affirmative, having regard to the link between sickness benefits and the occupation on which their payment depends, and to the disadvantages which would arise from frequent changes in the applicable legislation if the sickness benefits paid were not considered sufficient for a worker to continue to be subject to that legislation. The Commission also refers to the aforesaid judgment of the Court of 12 January 1983 in *Coppola*.

13 It must be remembered that in its judgment of 12 January 1983 in *Coppola*, which was concerned with Article 13 (2) (a) of Regulation No 1408/71, the Court pointed out that, 'although that provision does not expressly mention the case of a worker who is not employed when he seeks sickness benefit, it is appropriate to interpret it as meaning that, where necessary, it refers to the legislation of the State

in whose territory the worker was last employed'.

14 That solution is not limited as regards its temporal effects by Article 13 of Regulation No 1408/71 and does not depend on whether the worker is, or was for a certain period, in receipt of sickness benefits. If the worker has not taken up employment in another Member State, he continues to be subject to the legislation of the Member State in which he was last employed.

15 The answer to the first question must therefore be that Article 13 (2) (a) of Regulation No 1408/71 must be interpreted as meaning that a worker who ceases to carry on an activity in the territory of a Member State and who has not gone to work in the territory of another Member State continues to be subject to the legislation of the Member State in which he was last employed, regardless of the length of time which has elapsed since the termination of the activity in question and the end of the employment relationship.

Second question

16 The Netherlands Government refers to the objective of Title II of Regulation No 1408/71, which is the coordination of national legislation, and to the exclusive effect of the designation of the national legislation applicable. It maintains that the latter principle may be derogated from only in the circumstances provided for in Chapters 2 and 3 of Title III of the regulation on the ground that, if it were otherwise, the provisions of Title II, which are designed to coordinate the application of national legislation, would be rendered wholly ineffective. It observes that the principle of the inviolability of rights acquired under national law can apply only to rights acquired under the national legislation which is applicable by virtue of Title II of the regulation.

17 The Nieuwe Algemene Bedrijfsvereniging maintains that the provisions of Title II of Regulation No 1408/71 are exclusive in scope and have an overriding effect, inasmuch as they preclude the application of the legislation of a State other than that determined pursuant to those provisions. It contends that, although in its judgment of 9 June 1964 in Case 92/63 (*Nonnenmacher* [1964] ECR 281) the Court acknowledged the possibility of the simultaneous application of several systems of legislation, it did so on the basis of Article 12 of Regulation No 3/58,

which did not expressly prohibit the application of the legislation of a second Member State, that is to say a State other than that in which the person concerned worked. It adds that an interpretation allowing the simultaneous application of a second, more favourable, system of legislation was hindered by serious practical complications relating to the difficulty of defining the advantage which might be derived from simultaneous affiliation to the social security scheme of a Member State other than that in which the person concerned worked, and to the risks of creating confusion and upsetting the balance in the distribution of the financial burdens betwen Member States as a result of the differences between national laws governing the conditions of affiliation, the branches of insurance or the systems of contribution.

18 The Commission considers that the second question should be answered by reference to the scheme of Regulation No 1408/71 and the purpose of Title II thereof, which is to prevent more than one national legislative system from being applicable. With regard to the principle of the inviolability of rights acquired under national law, the Commission points out that it can apply only to the substantive rules governing coordination in Titles I and III of Regulation No 1408/71, and not to Title II, which regulates conflicts of law. No incompatibility between Community law and nationally-acquired rights can arise since the rules of Community law, as the conflict rules applicable in the matter, cannot come into conflict with the national statutory provisions whose respective fields of application they in fact determine. Finally, the Commission notes that the doctrine that rights acquired under national law are inviolable, which is based on Regulation No 3/58, cannot be applied as such to the interpretation of the wording of Regulation No 1408/71, which has deliberately been couched in different terms, and that the application of that doctrine would lead to considerable uncertainty in practice.

19 In that regard it must be borne in mind that, according to a consistent line of decisions of the Court, the aim of the provisions of Title II of Regulations No 3/58 and No 1408/71, which determine the legislation applicable to workers moving within the Community, is to ensure that the persons concerned shall be subject to the social security scheme of only one Member State, in order to prevent more than one national legislative system from being applicable and to avoid the complications which may result from that situation.

20 That principle, which was applied by the Court in relation to Regulation No 3/58, is expressed in Article 13 (1) of Regulation No 1408/71, which provides that 'a worker to whom this regulation applies shall be subject to the legislation of a

single Member State only' and that that legislation 'shall be determined in accordance with the provisions of this Title', that is to say Title II on 'the determination of the legislation applicable'.

21 The provisions of Title II constitute a complete system of conflict rules the effect of which is to divest the legislature of each Member State of the power to determine the ambit and the conditions for the application of its national legislation so far as the persons who are subject thereto and the territory within which the provisions of national law take effect are concerned. As the Court pointed out in its judgments of 23 September 1982 in Case 276/81 (*Kuijpers* [1982] ECR 3027) and in Case 275/81 (*Koks* [1982] ECR 3013), 'the Member States are [not] entitled to determine the extent to which their own legislation or that of another Member State is applicable' since they are 'under an obligation to comply with the provisions of Community law in force'.

22 That rule is not at variance with the Court's decisions (see, in particular, the judgment of 21 October 1975 in Case 24/75 *Petroni* [1975] ECR 1149) to the effect that the application of Regulation No 1408/71 cannot entail the loss of rights acquired exclusively under national legislation. That principle applies not to the rules for determining the legislation applicable but to the rules of Community law on the overlapping of benefits provided for by different national legislative systems. It cannot therefore have the effect, contrary to Article 13 (1) of Regulation No 1408/71, of causing a person to be insured over the same period under the legislation of more than one Member State, regardless of the obligations to contribute or of any other costs which may result therefrom for that person.

23 The answer to the second question must therefore be that the effect of determining that a given Member State's legislation is the legislation applicable to a worker pursuant to Article 13 (2) (a) of Regulation No 1408/71 is that only the legislation of that Member State is applicable to him.

Third question

24 In view of the answer given to the second question, the third question is redundant.

Costs

25 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. As 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 (Third Chamber),

in answer to the questions referred to it by the Raad van Beroep, 's-Hertogenbosch, by order of 20 November 1984, hereby rules:

(1) Article 13 (2) (a) of Regulation No 1408/71 must be interpreted as meaning that a worker who ceases to carry on an activity in the territory of a Member State and who has not gone to work in the territory of another Member State continues to be subject to the legislation of the Member State in which he was last employed, regardless of the length of time which has elapsed since the termination of the activity in question and the end of the employment relationship.

(2) The effect of determining that a given Member State's legislation is the legislation applicable to an employed person pursuant to Article 13 (2) (a) of Regulation No 1408/71 is that only the legislation of that Member State is applicable to him.

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 12 June 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber