JUDGMENT OF THE COURT (FIRST CHAMBER) OF 12 JULY 1979 [1]

Marianne Wörsdorfer, née Koschniske v Raad van Arbeid (preliminary ruling requested by the Raad van Beroep, Zwolle)

Case 9/79

1. *Community law — Methods of interpretation — Texts in several languages — Uniform interpretation — Different language versions to be taken into account*

2. *Social security for migrant workers — Family benefits — Pensioners — Rules against overlapping — Spouse of pensioner in receipt of family allowances in another Member State — Spouse — Concept*

   (Regulation No 574/72 of the Council, Art. 10 (1) as amended by Regulation No 873/73)

1. The need for a uniform interpretation of Community regulations makes it impossible in case of doubt for the wording of a provision to be considered in isolation but requires on the contrary that it should be interpreted and applied in the light of the versions existing in the other official languages.

2. The expression "diens echtgenote" [whose wife] in Article 10 (1) (b) of Regulation No 574/72 includes a married man who is engaged in a professional or trade activity in a Member State and whose wife is entitled under the provisions of Article 77 (2) (a) of Regulation No 1408/71 to family allowances under the legislation of another Member State.

In Case 9/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van Beroep (social security court), Zwolle, for a preliminary ruling in the action pending before that court between

MARIANNE WÖRSDÖRFER, NÉE KOSCHNISKE, Nordhorn (Federal Republic of Germany),

1 — Language of the Case: Dutch.

and

RAAD VAN ARBEID (Labour Board), Hengelo (Netherlands),

on the interpretation of Article 10 (1) (b) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition, 1972 (I), p. 159),

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President of the Chamber, A. O'Keeffe and T. Koopmans, Judges

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case, the course of the procedure, and the observations submitted under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The plaintiff in the main action, who is of German nationality, worked as an employed person in the Netherlands during 1970 but had to give up work on 17 March that year for reasons of health. From 14 April 1971 she drew an allowance under the Wet van 18 februari 1966, Staatsblad 84, inzake een Arbeidsongeschiktheidsverzekering [Law on insurance against incapacity for work], hereinafter referred to as "the 1966 Law", the extent of her incapacity being between 80 and 100%.

In pursuance of Article 77 (2) (a) of Regulation No 1408/71, the plaintiff is entitled, in pursuance of the legislation of the Netherlands, which is a Member State of the European Communities, to family allowances for three children, all under 16, residing with her and her husband at Nordhorn.

The legislation in question is as follows:

— The Algemene Kinderbijslagwet [General Law on family allowances] of 26 April 1962 (Staatsblad 160), several times amended (hereinafter referred to as "the 1962 Law");

— The Kinderbijslagwet voor Loontrekkenden [Law on family allowances for wage earners] of 23 December 1939 (Staatsblad 806) and the Law of 26 April 1962 (Staatsblad 161), several times amended (hereinafter referred to as "the Laws of 1939 to 1962");

— The Royal Decree of 19 October 1976 (Staatsblad 557);

— The Decree of the Minister for Social Affairs and Public Health of 20 December 1962, No 7140 (Staatscourant 1962, 250).

However, by a decision of 13 March 1978, the Raad van Arbeid, Hengelo, the defendant in the main action, suspended payment of these family allowances as from the fourth quarter of 1977 in pursuance of Article 10 (1) (b) of Regulation No 574/72, on the ground that the *spouse* of the plaintiff was exercising a professional or trade activity in Germany and receiving there allowances for dependent children ("Kindergeld"). It took the view that although Article 10 (1) (b) of Regulation No 574/72, as it is worded in the Dutch version, speaks of "echtgenote" (wife), it must be understood to mean also "echtgenoot" (husband), in view of the fact that the wording of the provision in question in the other official languages of the Community includes both terms "echtgenoot" and "echtgenote" in a single concept.[1]

Article 10 (1) of Regulation No 574/72, as amended by Council Regulations Nos 878/73 of 26 March 1973 (Official Journal, L 86, p. 1) and 1209/76 of 30 April 1976 (Official Journal, L 138, p. 1), reads as follows:

"Entitlement to family benefits or family allowances due under the legislation of a Member State, according to which acquisition of the right to those benefits or allowances is not subject to conditions of insurance or employment, shall be suspended when, during the same period and for the same member of the family:

(a) ...

(b) benefits are due in pursuance of Article 77 or 78 of the regulation. If, however, a pensioner who is entitled to benefits under Article 77 of the regulation, his spouse or the person looking after the orphans to whom benefits are due under Article 78 of the regulation, exercises a professional or trade activity in the territory of the said Member State, entitlement to family allowances due in pursuance of Article 77 or 78 of the regulation under the legislation of another Member State shall be suspended; where this is the case, the person concerned shall be entitled to the family benefits or family allowances of the Member State in whose territory the children reside, the cost to be borne by that Member State, and, where appropriate, to benefits other than the family allowances referred to in Article 77

1 — The words used in the other languages are as follows: Danish: "ægtefællen"; English: "spouse"; French: "conioint"; German: "Ehegatte" and Italian: "coniuge".

or 78 of the regulation, the cost to be borne by the competent State as defined by those articles."

On 12 April 1978 the applicant started proceedings before the Raad van Beroep, Zwolle, for the annulment of the above-mentioned decision.

The matter was considered at the public hearing of the Raad van Beroep on 11 September 1978. It was subsequently decided in Chambers to refer to the Court of Justice of the European Communities for a preliminary ruling a question on the interpretation of Regulation No 574/72.

By a letter from its President which reached the Court Registry on 19 January 1979, the Raad van Beroep submitted the following question to the Court of Justice for a preliminary ruling:

"Must 'diens echtgenote' [whose wife] in Article 10 (1) (b) of Regulation No 574/72 also be understood to mean a married man who is engaged in a professional or trade activity in a Member State and whose wife is entitled under the provisions of Article 77 (2) (a) of Regulation No 1408/71 to family allowances under the legislation of another Member State?"

In pursuance of Article 20 of the Statute of the Court of Justice of the EEC, written observations were lodged by the Government of the Kingdom of the Netherlands, represented by F. Italianer, and by the Commission of the European Communities, represented by its Legal Adviser, Jean Amphoux, assisted by Auke Haagsma, a member of its Legal Department.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it asked the Commission to reply in writing to one question.

By order of 8 May 1979, the Court assigned the case to the First Chamber in pursuance of Article 95 (1) of the Rules of Procedure.

II — Summary of the written observations submitted to the Court

The *Government of the Kingdom of the Netherlands* points out that, according to its title, the purpose of Article 10 of Regulation No 574/72 is to ensure that the application of Regulations Nos 1408/71 and 574/72 does not give rise to a right to family benefits or family allowances during the same period or part of a period under the legislation of more than one Member State.

Having regard to the purpose of the provision in question it is of no importance whether it is the wife ("echtgenote") or husband ("echtgenoot") who exercises a professional or trade activity on the territory of a Member State whose legislation does not make the acquisition of the right to the benefits or allowances in question subject to conditions of insurance or employment.

This interpretation is corroborated by the French and English versions of the provision in question. Furthermore any other interpretation would hardly be compatible with the prohibition on discrimination on the basis of sex as laid down by Council Directive No 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979, L 6, p. 24).

The *Commission* remarks first of all that, so far as it has been able to judge from the file, the Netherlands family allowances are not paid in their entirety but only to the extent to which they exceed the German family allowances, in

pursuance of Article 10 (1) (b) of Regulation No 574/72.

The Commission then gives a summary of the Netherlands legislation applicable to the case.

The 1962 Law provides for a so-called "national" insurance which, in pursuance of Article 7 thereof, grants family allowances to persons who are *insured* under that law. All residents who have attained the age of 15 are insured and so are non-residents who are subject to income tax by reason of a professional or trade activity pursued on Netherlands territory within the framework of a relationship of employment (Article 6 (1)).

In pursuance of the Laws of 1939 to 1962 any *worker* resident in the Netherlands is entitled to family allowances for the first and second children (Article 17). A person who is entitled to allowances by virtue of an incapacity for work amounting to at least 45% in pursuance of the 1966 Law is also deemed to be a worker within the meaning of the first-mentioned law (Article 8 B). As regards the condition of residence it is appropriate to refer also to Article 1 of the Ministerial Decree of 20 December 1969 by virtue of which a worker not residing in the Netherlands is however deemed to have his residence there if and so long as he is insured in pursuance of the 1962 Law.

In approaching the question referred to the Court the Commission emphasizes first that the two Netherlands laws applicable in this case make the right to family allowances subject to certain conditions. Hence there is no doubt, according to the Commission, that Article 10 of Regulation No 574/72 does not apply to this case.

However, the Commission thinks it advisable to make some observations on that article.

The purpose of Article 10 of Regulation No 574/72 is to avoid any unjustified overlapping of benefits. It is clear that the problem to which that provision relates may arise both when a male worker is in receipt of benefits and hence is entitled to family allowances in pursuance of Article 77 and as regards a female worker. If the Dutch version is taken literally and if therefore overlapping of family allowances is prohibited only when a male person is entitled in pursuance of Article 77, that would be tantamount not only to treating fundamentally identical cases differently but also to creating a difference in treatment between two cases according to whether a female or a male worker is involved. Such an interpretation would be contrary to the principle of equality of treatment between men and women as expressed in Article 119 of the Treaty and in the Council Directive of 19 December 1978.

Hence the conclusion must be that the provisions of Article 10 (1) (b) concern both the cases referred to so that the expression "echtgenote" (wife) must be understood as meaning husband as well as wife.

Furthermore the versions in the other languages have used terms which include both male workers and female workers. The Court has already stated expressly in several judgments that the need for a uniform interpretation of Community regulations makes it impossible for the text of a provision to be considered in isolation but on the contrary requires that, in cases of doubt, it should be interpreted and applied in the light of the versions existing in the other languages

(see in particular the judgment of the Court of 5 December 1967, Case 19/67, *Van der Vecht*, [1967] ECR 345).

In its reply to a question asked by the Court, the Commission adjusted the views adopted by it as set out above and supplied further explanations.

Family allowances in Germany are only paid where the claimant is domiciled or habitually resident in the territory where the law applies, that is to say, in the Federal Republic of Germany (Article 1 of the Bundeskindergeldgesetz [Federal Law on family allowances], BGBl 6 February 1975 p. 413, as amended by the Law of 14 December 1976, BGBl p. 3341). The remaining conditions do not include requirements relating to insurance or employment.

The German legislation on family allowances is therefore of the type mentioned in Article 10 (1) of Regulation No 574/72, so that that article should be applied to Mrs Wörsdörfer's case.

In this instance it is the provision set out in subparagraph (b) which applies, as Mrs Wörsdörfer's entitlement to family allowances depends on Article 77 of Regulation No 1408/71. According to *the first sentence* of Article 10 (1) of Regulation No 574/72 the German benefits should be suspended because benefits are due under Article 77 during the same period and for the same children.

The *second sentence*, however, contains an exception to this rule where a person entitled to benefits under Article 77 of Regulation No 1408/71 or — in particular — the spouse exercises a professional or trade activity in the territory of the Member State where there are no conditions of insurance of employment (Germany, in this instance). In such cases the entitlement to the allowances under Article 77 is suspended (that is, in the Netherlands) and the person concerned is then entitled to the benefits or family allowances of the Member State in whose territory the children reside.

Finally, the Commission refers to the decision in the *Rossi* case (judgment of 6 March 1979, Case 100/78). In that case the Court declared that the rule set out in Article 79 (3) of Regulation No 1408/71, designed to avoid overlapping of family allowances, is applicable only to the extent to which it does not, without cause, deprive the persons concerned of the benefit of a part of the legislation of a Member State, and that entitlement should therefore be suspended only to the extent of the amount actually being paid.

Since Article 10 of Regulation No 574/72 no more provides the answer to the problem of suspending benefits which are greater than those benefits with which they overlap than does Article 79 the Commission is of the opinion that that article should also be interpreted along the lines of the judgment of the Court referred to above. The competent authorities in the Netherlands can thus suspend entitlement to family benefits only up to the amount of the German family allowances (Kindergeld) and must, if appropriate, pay the surplus to Mrs Wörsdörfer.

III — Oral procedure

The Commission of the European Communities, represented by Auke Haagsma, submitted oral argument at the hearing on 14 June 1979.

The Advocate General delivered his opinion at the hearing on 28 June 1979.

Decision

1 In a letter from its President, received at the Court on 19 January 1979, the Raad van Beroep [social security court], Zwolle, referred to the Court a question concerning the interpretation of Article 10 (1) (b) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 (Official Journal, L 74, p. 1), fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, as amended by Council Regulations No 878/73 (Official Journal 1973, L 86, p. 1) and No 1209/76 (Official Journal 1976, L 138, p. 1)

2 This question was raised in the course of an action brought by a woman of German nationality entitled to a Netherlands invalidity pension, who by virtue thereof was receiving a Netherlands family allowance in pursuance of Article 77 (2) (a) of Regulation No 1408/71, against the decision by the competent Netherlands institution to suspend payment of that allowance by virtue of Article 10 (1) (b) of Regulation No 574/72. The decision was based on the fact that the recipient's husband was exercising a profession or trade in Germany and was drawing dependent child benefits there.

3 The provision relied on withholds payment of a family allowance from anyone entitled to it as a result of an invalidity pension if "his spouse", that is to say, his wife (diens echtgenote) according to the Dutch version of Article 10, exercises a professional or trade activity in the territory of a Member State where entitlement to family benefits is not subject to conditions of insurance or employment. Since the beneficiary's husband was receiving family benefits in Germany, the question whether Article 10 should be applied arose owing to the use of the word "echtgenote" [wife] in the Dutch version of that article.

4 Believing that this was a question of interpreting Community law, the Raad van Beroep referred the following question to the Court for a preliminary ruling:

"Must 'diens echtgenote' [whose wife] in Article 10 (1) (b) of Regulation No 574/72 also be understood to mean a married man who is engaged in a

professional or trade activity in a Member State and whose wife is entitled under the provisions of Article 77 (2) (a) of Regulation No 1408/71 to family allowances under the legislation of another Member State?"

5 In fact the wording of the provision in question, considered solely in the Dutch version, is capable of giving the impression that the term used refers exclusively to a person of the female sex.

6 However, the need for a uniform interpretation of Community regulations makes it impossible for that passage to be considered in isolation and requires that it should be interpreted and applied in the light of the versions existing in the other official languages.

7 A comparison with the other versions of the provision in question reveals that, in all the other versions, a word has been used which includes equally male and female workers ("ægtefællen", "Ehegatte", "spouse", "conjoint", "coniuge").

8 This interpretation is borne out on the one hand by the purpose of the provision, which is to avoid the overlapping of family allowances for the same children and on the other hand by the principle of equal treatment for male and female workers in the field of social security.

9 The reply to the Raad van Beroep should therefore be that the expression "diens echtgenote" [whose wife] in Article 10 (1) (b) of Regulation No 574/72 includes a married man who is engaged in a professional or trade activity in a Member State and whose wife is entitled under the provisions of Article 77 (2) (a) of Regulation No 1408/71 to family allowances under the legislation of another Member State.

Costs

10 The costs incurred by the Commission of the European Communities and the Government of the Kingdom of the Netherlands, which have submitted observations to the Court, are not recoverable. As these proceedings are, in

so far as the parties to the main action 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 (First Chamber),

in answer to the question referred to it by the Raad van Beroep, Zwolle, by a letter from its President of 16 January 1979, hereby rules:

The expression "diens echtgenote" [whose wife] in Article 10 (1) (b) of Regulation No 574/72 includes a married man who is engaged in a professional or trade activity in a Member State and whose wife is entitled under the provisions of Article 77 (2) (a) of Regulation No 1408/71 to family allowances under the legislation of another Member State.

Mertens de Wilmars O'Keffe Koopmans

Delivered in open court in Luxembourg on 12 July 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber