JUDGMENT OF THE COURT
OF 7 NOVEMBER 1973 [1]

Bestuur der Sociale Verzekeringsbank v B. Smieja (preliminary ruling requested by the Centrale Raad van Beroep)

Case 51/73

Summary

1. *Social security for migrant workers — Particular schemes under national law within the meaning of Articles 10 (1) of Regulations No 3 and No 1408/71 of the Council — Meaning*

2. *Social security for migrant workers — Particular schemes under national law — Benefits thereunder — Grant — Conditions — Territorial clause — Cannot be applied*

(Regulations No 3 and No 1408/71 of the Council, Article 10 (1))

1. The phrase 'by virtue of the legislation of one or more Member States' in Article 10 (1) of Regulation No 3 and the phrase '... under the legislation of one or more Member States' in Article 10 (1) of Regulation No 1408/71 refer to national laws after the effects of community law, and particularly the principle of non-discrimination between nationals of Member States, have been taken into account.

2. The protection afforded by Article 10 (1) of Regulations Nos 3 and 1408/71 extends to benefits arising from particular schemes under national law which are given effect by increasing the value of the payment to be made to the beneficiary.

In Case 51/73

Reference to the Court under Article 177 of the EEC Treaty by the Centrale Raad van Beroep of Utrecht for a preliminary ruling in the action pending before that court between

BESTUUR DER SOCIALE VERZEKERINGSBANK, Amsterdam,

and

B. SMIEJA, resident in Essen-Küpferdreh (FRG),

1 — Language of the Case: Dutch.

on the interpretation of Article 8 and 10 (1) of Regulation No 3 of the Council of 25 September 1958 (OJ No 30/1958, p. 561), on social security for migrant workers, and Articles 3 (1) and 10 (1) of EEC Regulation No 1408/71 of the Council of 14 June 1971 (OJ L 149/71, p. 2), on the application of social security schemes to employed persons and their families moving within the Community,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen (Rapporteur), Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore and C. Ó Dálaigh, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. (a) Regulation No 3, Article 8, and Regulation No 1408/71, Article 3 (1), provide that the persons concerned shall enjoy the benefits of the social security legislation of any Member State under the same conditions as the nationals of that State.

Both in Regulation No 3 and in Regulation No 1408/71, Article 10 (1) provides, in effect, that cash benefits, pensions, and other financial grants acquired under the legislation of one or more Member States shall not be subject to any reduction, etc., 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.

(b) From 1 January 1957 the sickness and old-age pension scheme for employed persons in the Netherlands was replaced, insofar as old-age pensions are concerned, by a general old-age pension scheme covering all residents. Since this legislation (hereinafter referred to as the AOW) extends old-age pension benefits to persons other than employed persons, and the pension rates for employed persons under the sickness and old-age pension scheme were fairly low, the AOW contains transitional provisions whereby anyone who had attained the age of 15 years but not 65 years on 1 January 1957 shall be deemed to have been insured for the period between the date on which he completed his 15th

year and 1 January 1957, provided that he has been resident in the Netherlands for the six years immediately following completion of his fifty-ninth year (Article 43 of the Law). Article 44 of the Law adds that only persons of Dutch nationality who are habitually resident in the Netherlands may be accorded these benefits, although the two last requirements may, under Article 45, be waived by an administrative order, subject to the conditions to be laid down by it.

2. Miss Smieja, a German national resident in the Federal Republic of Germany when she attained the age of 65 years, and still resident there, was granted, by a decision of the Sociale Verzekeringsbank of Amsterdam (hereinafter referred to as the Bank) on 10 December 1970, an old-age pension with effect from 1 February 1970, attributable to the periods she had spent in the Netherlands, and amounting to 45·6 % of the old-age pension normally available under the AOW. The Bank had determined the amount of the pension in accordance with the provisions of the Convention on the application of the Dutch General Old-Age Law concluded on 9 March 1961 by the Netherlands and Germany on the basis of Article 7 of Regulation No 3 of the Council.

Miss Smieja filed an objection to this decision in the Raad van Beroep of Amsterdam (hereinafter referred to as the Raad). In the course of the proceedings the Bank altered its interpretation of the law and informed the Raad, in a letter of 8 September 1971, that in view of Articles 8 and 10 of Regulation No 3 of the Council, it considered that it had been mistaken in its assessment of Miss Smieja's pension and that, although she was of German nationality and resident in the territory of the Federal Republic of Germany, she was entitled to the benefit of the transitional provisions contained in Article 43 of the AOW by virtue of the fact that she had been insured for six years after the age of 59 years. Accordingly the Bank requested the Raad to annul its decision of 10 December 1970 and to award Miss Smieja the pension for an unmarried person with a reduction of only 12 %, being 2 % for each year during which she was not insured, i.e. 1957-1962.

Giving judgment on 4 April 1972, the Raad rejected this proposition and held that the Bank's decision of 10 December 1970 was correct in law.

The Bank, however, believing that there was some doubt as to the interpretation of Articles 8 and 10 of Regulation No 3 of the Council, appealed against the Raad's decision to the Centrale Raad van Beroep of Utrecht.

3. In an order dated 8 March 1973, the Centrale Raad van Beroep decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

1. (a) Do the words 'the social security legislation of any Member State' in Article 8 of Regulation No 3, or the words 'the legislation of any Member State' in Article 3 (1) of Regulation No 1408/71, mean the national legislation as it is after the rules of Community law have been incorporated in it, or the national legislation as formulated, without taking any account of the material changes brought about by the provisions of the Regulations, namely those contained in Article 10 (1) of both the abovementioned Regulations?

   (b) Do the words 'under the legislation of one or more Member States' in Article 10 (1) of Regulation No 3, or the words 'under the legislation of one or more Member States' in Article 10 (1) of Regulation No 1408/71, mean under the national legislation as it is after the rules of Community law have been

incorporated in it, or under the national legislation as formulated, without taking any account of the material change brought about by the provisions of the Regulations, namely those contained in Article 8 of Regulation No 3 or Article 3 (1) of Regulation No 1408/71?

(c) In other words, do Articles 8 and 10 (1) of Regulation No 3, or Articles 3 (1) and 10 (1) of Regulation No 1408/71, complement each other in such a way that these provisions considered together broaden the requirements of nationality and residence into the citizenship and territory of the Community, or are these provisions entirely independent of each other?

2. What is the meaning of the word 'acquired' in Article 10 (1) of Regulations No 3 and No 1408/71, viewed against the background of the manifold legal and factual situations created by the national legislation of the various Member States?

4. The arguments apparent from the grounds given in the order made by the Centrale Raad and the accompanying documents may be summarized as follows:

(a) *The Raad van Beroep of Amsterdam,* in its judgment of 4 April 1972, acknowledges that under national legislation Miss Smieja's actual residence in the Federal Republic from 1 January 1963 to 1 February 1970 must be assimilated, for the purposes of Article 43 of the AOW to residence in the territory of the Netherlands. Nevertheless, the Raad is of the opinion that, in order to take advantage of the transitional benefits, the applicant must also meet the requirements applicable to Dutch nationals under Article 44 of the AOW. They are not met by Miss Smieja.

The Raad considers, *inter alia,* that it would be a mistake to assume, for the purposes of Article 10 of Regulation No 3, that the applicant should be deemed to have fulfilled the conditions relating to nationality by virtue of Article 8 of the said Regulation. In the Raad's opinion, Article 10 is directed in reality at effects on payment of pensions already acquired exclusively under the legislation of one or more Member States.

Therefore, according to the Raad, Miss Smieja cannot enjoy the transitional benefits conferred by Dutch law insofar as these do not derive from the 1961 German-Dutch Convention.

(b) The Sociale Verzekeringsbank remarks that the fact that Miss Smieja had been insured between the ages of 59 and 65, and consequently, if the national assimilation rules were taken into account, that her residence in Germany during that time must be assimilated to residence in the Netherlands, is not disputed. It concludes from this that the applicant would be entitled to the transitional benefits under the AOW if she were of Dutch nationality and if she were resident in the Netherlands. The national laws alone do not permit her nationality and residence to be assimilated to Dutch nationality and residence in the Netherlands. But taking into account the provisions of Regulation No 3, the Bank considers that Miss Smieja is entitled to the transitional benefits under the AOW. All this depends of course on the answers given to the questions asked in the order making the reference.

As regards Article 10 of Regulation No 3, the Bank has pointed out that this provision cannot be read in isolation from the objectives set out in Article 51 of the EEC Treaty which formed the basis of the Regulation, and which provides for the measures to be taken in the sphere of social security which are necessary in order to achieve freedom of movement for workers. Article 51 (b) of the Treaty employs the term 'resident', not the phrase 'who establish their residence', and the same is so in Article

10 (1) of the Regulation, which uses the word 'resides' and not the phrase 'has established his residence' if the residence requirement contained in the national laws is an essential constituent of the right to benefits, or a condition imposed for payment of them, yet that is not considered by the Bank to be a determining factor in the interpretation of Article 10. Consequently it does not think it unreasonable to suppose that the words 'cash benefits, ... pensions, or ... grants acquired' in Article 10 mean that residence in the territory of any Member State is assimilated to residence in the territory of the Member State in question, irrespective of the manner in which the rights to such benefits are obtained. Furthermore, the Bank maintains that the word 'legislation' in Article 10 (1) should be interpreted as meaning national legislation as supplemented or modified by Community law. The Bank cites Articles 11 (2), 28 (1), and 31 (1) and (7) a, of the Regulation in support of this claim. It refers in this matter to the judgment given by the Court on 10 December 1969 in Case 34/69, *(Caisse d'Assurance Vieillesse v Duffy,* Rec. 1969, p. 597).

It is the Bank's opinion that the same arguments apply to the interpretation of Article 8. Any other reading would be condusive to discrimination incomparible with the aims of the Treaty, particularly the principle of non-discrimination laid down in Article 48 (2) of the Treaty. That is why the Bank rejects the interpretation given by the Raad to Articles 8 and 10 of Regulation No 3, which would provoke precisely discrimination such as this.

5. The order of the Centrale Raad van Beroep was registered at the Registry of the Court on 19 March 1973.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on behalf of the Dutch Government by the Ministry of Foreign Affairs and on behalf of the Commission of the European Communities by its legal adviser, Mr R. C. Fischer, assisted by Miss M.-J. Jonczy, of the legal service. Miss Smieja wrote to the Court on a number of occasions giving information concerning her residence in the Netherlands.

After hearing the report of the Judge-Rapporteur, and the opinion of the Advocate-General, the Court decided to commence oral proceedings without any preparatory inquiry.

The Commission's oral observations were heard at the hearing on 27 September 1973.

The Advocate-General delivered his opinion at the hearing on 24 October 1973.

II — Written observations submitted to the Court

The observations submitted to the Court may be summarized as follows:

The *Dutch Government* claims that the term 'legislation of any Member State' which appears in the Articles cited in the questions must be understood to mean national legislation as it is defined in Article 1 (b) of Regulation No 3 and Article 1 (j) of Regulation No 1408/71.

In applying each of these Articles one must, in the Government's opinion, take into account the other provisions of the Regulation, where their context so requires. Thus, for example, the prohibition against discrimination on the ground of nationality contained in Article 8 and Article 3 must be taken into account in applying Article 10 of both Regulations (which governs the export of benefits acquired under the legislation of a Member State). There is no support for the theory that the above provisions complement one another in such a way as to broaden the requirements of nationality and residence into the citizenship and

territory of the Community. If that were so, anyone resident in the Community could obtain the benefits provided for in, say, the legislation considered in the judgment of the Court on 22 June 1972 in Case 1/72 *(Rita Frilli v Belgian State,* Rec. 1972, p. 457).

The Dutch Government considers that the word 'acquired' in Article 10 (1) of Regulations No 3 and No 1408/71 applies to the benefits and pensions mentioned in those provisions, but not to the transitional benefits arising from Article 43 of the AOW. Consequently, in neither Regulation does Article 10 prevent application of the residence condition on which, under Article 44 of the AOW the grant of transitional benefits depends.

The *Commission of the European Communities* submits that in the absence of any express provision in a bilateral instrument or in a Community regulation, to the effect that period of residence completed between the ages of 59 and 65 years in a Member State other than the Netherlands are to be assimilated to periods of residence in the Netherlands, workers who have completed periods in that country prior to 1 January 1957 but who have not been resident in the Netherlands between the ages of 59 and 65 years, cannot benefit under the transitional provisions of the AOW. No such provision was made in Regulation No 3, and indeed, in its original form the latter excluded the possibility of exporting benefits under the abovementioned transitional provisions (the benefits referred to are included in Annex E of the Regulation). That is why the Netherlands and Germany concluded a Convention on 9 March 1961 on the basis of Article 7 of Regulation No 3, in order to permit the grant, to German and Dutch nationals resident in the German Federal Republic, of benefits under the provisions of the Dutch General Old-Age Law, which are not dependent on contribution periods, i. e. for periods prior to 1 January 1957. The Convention was notified in accordance with Article 54 (1) of Regulation No 3.

Although the restrictions on export of pensions or parts thereof payable under the transitional provisions of the AOW were lifted by the repeal of the part of Annex E, Regulation No 3, relating to the Netherlands, and Regulation No 130/63 of the Council (OJ No 188 of 28.12.1963) brought into Annex G III of Regulation No 3 a Part B providing that for the purposes of Articles 27 and 28 of that Regulation, the contribution periods or the periods for payment of premiums completed before 1 January 1957, under the Dutch sickness and old-age pension scheme for employed persons (i.e. the former law), should be assimilated to periods covered by insurance under the AOW, the German-Dutch Convention remained in force.

The Commission also points out that this Convention was not incorporated into Annex II of Regulation No 1408/71 which covers the provisions contained in social security conventions not affected by the Regulation, and, moreover, that Annex V of the same Regulation includes special provisions as to the application of the Dutch General Old-Age Law, drawing heavily on the provisions of the German-Dutch Convention of 9 March 1961.

When all this is borne in mind, the Bank's reasoning appears to the Commission to be erroneous. As to Question 1 (a), the Commission states that it has never been in doubt that the objective of the provisions in Article 8 of Regulation No 3 and Article 3 (1) of Regulation No 1408/71 was to abolish, for the benefit of the persons mentioned, any discrimination based on nationality occasioned by the internal legislation of Member States. Thus the intention of the authors of the regulations was that Article 8 of Regulation No 3 and the corresponding provision in Article 3 (1) of Regulation No 1408/71 should not ensure for those availing themselves of such provisions the benefits created by bilateral conventions for nationals of the

contracting parties under their internal legislation, apart from special provisions.

The Commission's opinion, then, is that these Articles merely provide for equal treatment under internal legislation, leaving untouched, in particular, any residence condition which this legislation requires nationals to fulfil before they may benefit from the law in question. The Commission therefore considers that the argument advanced by the Raad van Beroep to the effect that a party must, in order to benefit from the provisions of Article 43 of the Dutch General Old-Age Law, fulfil the residence condition laid down in Article 44 of that law, is correct.

As regards Question 1 (b), the Commission points out that Article 10 (1) of Regulation No 3 and Article 10 (1) of Regulation No 1408/71 are designed to remove the residence conditions for the payment of benefits acquired under the legislation of one or more Member States.

It is difficult, in the Commission's view, to conceive that these Articles do not apply to benefits acquired solely by virtue of the principle of equal treatment embodied in Article 8 of Regulation No 3 and in Article 3 (1) of Regulation No 1408/71. The effect of restricting the scope of Article 10 to export of benefits acquired under internal laws as such would be quite contrary to the effect envisaged by Article 51 of the Treaty. For, if that view were adopted, the great majority of those who would benefit from this provision in the Regulation would be workers who were nationals, not migrant workers. Another consequence of such a theory would be to reduce to nil the practical scope of the provisions of Article 51 (a) of the Treaty whereby workers may acquire the right to benefit when periods covered by insurance abroad are taken into account, since the parties could only enjoy the benefits thus acquired if they were resident in the territory of each of the Member States from whom benefit was due *pro rata*.

As far as the second question is concerned, the Commission considers that the term 'acquired' means that all the conditions of entitlement contained in the internal legislation are fulfilled after taking into account, where necessary, the rules of Community law. Contrary to the Bank's view, the residence condition laid down by Article 43 of the AOW is a condition of entitlement for the grant of the benefits covered by Article 44. This condition is not removed by Article 10 (1) of Regulation No 3 and Article 10 (1) of Regulation No 1408/71.

The Commission would reply to the questions as follows:

1. (a) The words 'the social security legislation of any Member States' in Article 8 of Regulation No 3 and the words 'the legislation of any Member State' in Article 3 (1) of Regulation No 1408/71 refer to national legislation as formulated.

   (b) The words 'under the legislation of one or more Member States' in Article 10 (1) of Regulation No 3, and the words '... under the legislation of one or more States ...' in Article 10 (1) of Regulation No 1408/71 mean the national legislation as it is after Regulations No 3 and No 1408/73 have been applied.

   (c) The answer to this question (put 'in other words') appears at (a) and (b).

2. The word 'aquired' in Article 10 (1) of Regulations No 3 and No 1408/71 means that all conditions of entitlement imposed by internal legislation are fulfilled, after taking into account, where appropriate, the rules of Community law.

Grounds of judgment

1 By an order dated 8 March 1973, lodged at the Registry on 19 March 1973, the Centrale Raad van Beroep referred a number of questions concerning the interpretation of Regulations of the Council No 3 of 3 December 1958 on social security for migrant workers and No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons.

2 The substance of the questions is whether the term 'legislation' of Member States in Articles 8 and 10 (1) of Regulation No 3, and also in Articles 3 (1) and 10 (1) of Regulation No 1408/71 is to be interpreted as meaning national legislation as it is after Community law has been incorporated into it, or national legislation as formulated, regardless of any modification of it brought about by the Regulations referred to.

3 An interpretation of the word 'acquired' in Article 10 (1) of Regulations No 3 and No 1408/71 is also requested.

4 The order making the reference reveals that the plaintiff in the main action, of German nationality and currently resident in Germany, though formerly employed in the Netherlands, applied on reaching the age of 65 years in 1970 for the scheme set out in Article 43 of the Dutch General Old-Age Law (AOW) to be taken into account in the assessment of her old-age pension under Dutch legislation.

5 The scheme mentioned covers all persons who had not attained the age of 65 years on 1 January 1957 and were resident in the Netherlands for the six years following the completion of their fifty-ninth year, with the proviso in Article 44, however, that only those persons might benefit under Article 43 who '(a) possess Dutch nationality and (b) reside within the Kingdom'.

6 It is evident from the file that the plaintiff in the main action is, under the Dutch law governing the application of Article 43, assimilated with persons who were resident in the Netherlands for the six years following their fifty-ninth year, despite the fact that her actual residence for the determining period was in Germany.

7 It therefore follows that the only point in dispute is whether or not she may be considered to have fulfilled the condition of residence imposed by Article 44 of the Law.

8 By reason of her former employment in the Netherlands, the plaintiff is covered by the Community regulations for migrant workers.

9 The scope of the abovementioned regulations must therefore be examined in the light of these circumstances.

10 Article 8 of Regulation No 3, which is substantially repeated in Article 3 (1) of Regulation No 1408/71, provides that persons resident in the territory of a Member State who are covered by the Regulation shall be subject to the same obligations and enjoy the same benefits under the social security legislation of any Member State as the nationals of that State.

11 This provision is designed to ensure for workers covered by the regulations equality in the area of social security without distinction as to nationality, by prohibiting any discrimination in such matters arising from the national legislation of Member States.

12 That objective does not necessarily require that distinctions based on the parties' residence be removed, so that the Articles mentioned cannot be considered as affecting such distinctions.

13 To state this is not to exclude the possibility that distinctions based on residence may be envisaged by other provisions, such as Article 10 (1) of each of the two Regulations.

14 Article 10 (1) ensures for the recipient full entitlement to various cash benefits, pensions, and other grants acquired under the legislation of one or more Member States, even while he resides in the territory of a Member State other than that in which the institution responsible for payment is situated.

15 The aim of this provision is to guarantee the party concerned his right to have the benefit of such payments even after taking up residence in a different Member country, e.g. his country of origin.

16 The rights under discussion often derive, not from national legislation alone, but from what legislation combined with the principle of non-discrimination on the basis of nationality set out in Article 8 of Regulation No 3 and Article 3 (1) of Regulation No 1408/71).

17 In the event of the party's rights deriving from the legislation of several Member States — a possibility expressly foreseen in Article 10 — payment is always made according to the provisions in the regulation.

18 It may therefore be concluded that the prase 'legislation of one or more Member States' in Article 10 (1) must be interpreted as embracing the relevant provisions of Community law.

19 Secondly, an interpretation of the word 'acquired' in Article 10 (1) Regulations No 3 and No 1408/71 is requested.

20 As already stated, the purpose of this provision is to promote the free movement of workers, by insulating those concerned from the harmful consequences which might result when they transfer their residence from one Member State to another.

21 For this, the protection given must necessarily extend to cover benefits which, while created within the confines of a particular scheme, e.g. that in Article 43 of the AOW, are given effect by increasing the value of the pension which would otherwise accrue to the recipient.

22 It follows that, to the extent that a national law such as Article 44 of the AOW imposes a condition of residence on would-be recipients of some of the benefits of the type mentioned in Article 10, the fact that the person concerned resides in the territory of a different Member State is no ground for modification, withdrawal or suspension of such benefit.

Costs

23 The costs incurred by the Dutch Government and the Commission of the European Communities which have submitted observations to the Court are not recoverable.

24 As these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before a national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 51 and 177;
Having regard to Regulation No 3 of the Council on social security for migrant workers, especially Articles 8 and 10;
Having regard to Regulation No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community, especially Articles 3 and 10;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the questions referred to it by the 'Centrale Raad van Beroep' by order of that court dated 8 March 1973, hereby rules:

1. **The phrase 'under the legislation of one or more Member States' in Article 10 (1) of Regulation No 3, and the phrase '... under the legislation of one or more Member States' in Article 10 (1) of Regulation No 1408/71 mean national legislation as it is after the rules of Community law, in particular the principle of non-discrimination between nationals of the Member States, have been incorporated in it.**

2. **The word 'acquired' in Article 10 (1) of Regulations No 3 and No 1408/71 is to be interpreted as meaning that the protection ensured by that provision extends to the benefits arising from particular schemes**

under national law which are given effect by increasing the value of the payment which would otherwise be made to the recipient.

Lecourt Donner Sørensen

Monaco Mertens de Wilmars Pescatore Ó Dálaigh

Delivered in open court in Luxembourg on 7 November 1973.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 24 OCTOBER 1973 [1]

Mr President,
Members of the Court,

The national court which has referred to us the questions of interpretation in the present proceedings has to decide whether a German citizen, resident in the Federal Republic at the time when she attained the age of 65 years, and still residing there, has, under Community legislation on social security for migrant workers, a right to benefit under the transitional provisions of Article 43 of the Netherlands General Old-age Insurance Law (AOW) of 31 May 1956. Under this enactment, anyone who, before Article 6 of the said Law came into force, was over 15 years of age but under 65, and who, with or without interruption, had resided in the Kingdom of the Netherlands for six years after completion of his 59th year, is for the purposes of the AOW treated as having been insured during the period between his 15th year and the entry into force of the Law.

However, Article 44 of the same Law lays down that only persons of Dutch nationality and who, moreover, have their residence in the Kingdom are entitled to the benefits provided under Article 43.

The Dutch insurance institution ('Sociale Verzekeringsbank'), which at first denied that Article 43 was applicable to Miss Smieja, subsequently changed its mind, having reached the conclusion that, under Articles 8 and 10 of Regulation No 3 of the Council, she was entitled to benefit under the said transitional provisions.

On the other hand, the Raad van Beroep of Amsterdam has refused to accept that Article 43 applies to her and, in appeal proceedings instituted by the insurance institution against this refusal, the Centrale Raad van Beroep, acting under Article 177 of the EEC Treaty, referred

1 — Translated from the Italian.