JUDGMENT OF THE COURT (Fifth Chamber)
25 February 1986 *

In Case 284/84

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 action pending before that court between

L. A. Spruyt

and

Bestuur van de Sociale Verzekeringsbank [Board of Management of the Social Insurance Bank], Amsterdam,

on the interpretation of Annex VI, Part I, Point 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 (Official Journal 1983, L 230, p. 8),

THE COURT (Fifth Chamber)

composed of: U. Everling, President of Chamber, R. Joliet, O. Due, Y. Galmot and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: D. Louterman, Administrator

after considering the observations submitted

by Mr Spruyt in person in the written procedure,

on behalf of the Sociale Verzekeringsbank by Mr ter Kuile in the written procedure and by Mr ter Kuile and Mr Pijnacker at the hearing,

* Language of the Case: Dutch.

on behalf of the Netherlands Government by Mr Verkade in the written procedure,

on behalf of the Commission of the European Communities by Mr Griesmar and Mr Herbert in the written procedure and by Mr Herbert at the hearing,

after hearing the Opinion of the Advocate General delivered at the sitting on 21 January 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 an order of 24 January 1984 and a supplementary order of 25 September 1984, both of which were received at the Court on 29 November 1984, the Centrale Raad van Beroep, Utrecht, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Council Regulation No 1408/71 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 (Official Journal 1983, L 230, p. 8), and in particular Annex VI, Part I, Point 2 thereof. The purpose of the questions is to enable the national court to determine the insurance periods to be taken into account in respect of a married woman for the purposes of the calculation of the old-age pension payable under the Netherlands Algemene Ouderdomswet [General Law on Old-Age, hereinafter referred to as 'the Old-Age Law'].

2 The questions were raised in an action between L. A. Spruyt, an employed person of Netherlands nationality residing in Belgium, and the Bestuur van de Sociale Verzekeringsbank [hereinafter referred to as 'the Verzekeringsbank'], Amsterdam. The action relates to the calculation of the old-age pension payable to a married man under the Old-Age Law, to which Mr Spruyt is entitled.

3 The Old-Age Law provides that any person who resides in the Netherlands is insured under the general old-age insurance scheme established by that law. The amount of the old-age pension is determined on the basis of the number of years of insurance completed by a pensioner between his 15th and 65th birthdays. According to the Old-Age Law, as it applied at the material time, a married woman is not entitled to an old-age pension. Her husband is entitled to a married man's old-age pension, which is calculated on the basis of the insurance periods completed by himself and his wife. In determining the amount of the pension, the full married man's pension is reduced by 1% for each year for which he or his wife was uninsured. In the case of a single person's pension, there is a reduction of 2% for each uninsured year.

4 The Old-Age Law contains transitional provisions which, in certain circumstances, enable periods between the recipient's 15th birthday and 1 January 1957, the date on which the law entered into force, to be treated as insurance periods for the purposes of the Old-Age Law. One of the conditions for the periods to be so treated is, by virtue of Article 43 of the Old-Age Law, that the person concerned must have resided in the Netherlands for an uninterrupted period of six years or for periods totalling six years since his 59th birthday. A married woman who is younger than her husband satisfies that condition if she has resided in the Netherlands for six years since her husband's 59th birthday. In addition, under Article 44 of the Old-Age Law, a person may benefit from the transitional provisions only as long as he resides in the Netherlands.

5 Point 2 of Part I of Annex VI to Regulation No 1408/71 (formerly Part H of Annex V thereto) contains, *inter alia*, the following provisions concerning the application of Netherlands legislation on general old-age insurance:

'(a) Periods of insurance before 1 January 1957 during which a recipient, not satisfying the conditions permitting him to have such periods treated as periods of insurance, resided in the territory of the Netherlands after the age of 15th or during which, whilst residing in the territory of another Member State, he pursued an activity as an employed person in the Netherlands for an employer established in that country, shall also be considered as periods of insurance completed in application of Netherlands legislation for general old-age insurance.

...

(c) As regards a married woman whose husband is entitled to a pension under Netherlands legislation on general old-age insurance, periods of the marriage

preceding the date when she reached the age of 65 years and during which she resided in the territory of one or more Member States shall also be taken into account as insurance periods, in so far as those periods coincide with periods of insurance completed by her husband under that legislation and with those to be taken into account in pursuance of subparagraph (a).

...

(f) The periods referred to in subparagraphs (a) and (c) shall only be taken into account for calculation of the old-age pension if the person concerned has resided for six years in the territory of one or more Member States after the age of 59 years and for as long as that person is residing in the territory of one of those Member States.'

6 It appears from the order requesting a preliminary ruling that Mr Spruyt, who was born on 15th November 1914, and his wife, who was born on 19 October 1920, are both Netherlands nationals and were married on 16 November 1944. Until 4 November 1973 the couple always resided in the Netherlands; since that date Mr Spruyt, who had formerly pursued an activity as an employed person, and his wife, who had never pursued an activity as an employed person or as a self-employed person, have been living in Belgium.

7 When the Verzekeringsbank calculated the married man's old-age pension to which Mr Spruyt has been entitled since 15 November 1979, it applied a reduction of 21% in respect of six years when Mr Spruyt was not insured and 15 years when his wife was not insured. That determination, which was confirmed at first instance by the Raad van Beroep [Social Security Court], Amsterdam, is at issue in the proceedings before the Centrale Raad van Beroep.

8 As regards Mr Spruyt, the Verzekeringsbank treated the period of six years between 14 November 1973 and his 65th birthday, during which he was resident in Belgium, as an uninsured period for the purposes of the Old-Age Law. In relation to the period prior to the entry into force of the Old-Age Law, Mr Spruyt did not satisfy the residence requirement for the granting of transitional benefits under Articles 43 and 44 of the Old-Age Law, but he did satisfy the conditions laid down in Point 2 (a) and (f) of Annex VI to Regulation No 1408/71.

9 Mrs Spruyt was also uninsured for the purposes of the Old-Age Law for the six years commencing on 14 November 1973. In relation to the period prior to the entry into force of the Old-Age Law, she did not satisfy the residence requirement for the granting of transitional benefits under Articles 43 and 44 of the Old-Age Law; however, the Verzekeringsbank applied Point 2 (c) of the aforementioned annex to Regulation No 1408/71 and took into account the period of her marriage prior to 1 January 1957 which coincided with the insurance periods to be taken into account in respect of her husband under Point 2 (a), namely the period between 16 November 1944 and 1 January 1957. The period of nine years between her 15th birthday and the date of her marriage was not taken into account. That is the period which is at issue in the main proceedings.

10 With regard to that period, the Centrale Raad van Beroep asks whether, in the case of a married woman, all periods of residence in the Netherlands, even periods before her marriage, should be taken into account as periods of insurance under Point 2 (a) of Part I of Annex VI to Regulation No 1408/71. In that respect it points out in particular that it is the Verzekeringsbank's general practice to apply Point 2 (a) to married women who are employed, on the ground that it would be unjust, in relation to women who themselves fall within the scope *ratione personae* of Regulation No 1408/71, not to take into account periods which, in the case of a single woman, would be taken into account under Point 2 (a). In the light of that practice, the Centrale Raad van Beroep asks whether Mrs Spruyt also falls within the scope *ratione personae* of Regulation No 1408/71 as a member of the family of a worker and whether she is a 'recipient' within the meaning of Point 2 (a).

11 The Centrale Raad van Beroep therefore referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is a married woman (who cannot be regarded as an employed person within the meaning of Article 1 (a) of Regulation No 1408/71) whose insurance record, under the national legislation on old-age pensions, helps to determine the amount of the old-age pension for married couples to be awarded to her husband (who is an employed person within the meaning of Article 1 (a) of the regulation) to be regarded as a member of the family within the meaning of Article 1 (f) of the regulation?

(2) If so, is Regulation No 1408/71 — in the light of the provisions of Annex V, Part H, (now Annex VI, Part I) Point 2 (a), of the regulation — applicable to such a married woman?'

12 With regard to the first question it must be observed — as the Verzekeringsbank, the Netherlands Government and the Commission have emphasized — that the provisions of Annex VI, Part I, Point 2 of Regulation No 1408/71, which were drafted with the Old-Age Law specifically in mind and were intended to supplement that Law, must be interpreted in the light of the scheme and provisions of the Old-Age Law. Under the scheme of the Old-Age Law, as described above, a married woman, who is not entitled to any benefits, may not be regarded as a 'recipient' of benefits within the meaning of Point 2 (a). That does not affect the question whether such a woman may be regarded as a 'member of the family' within the meaning of Article 1 (f) of Regulation No 1408/71.

13 However, it is apparent from the order requesting a preliminary ruling that the first question was only asked for the purposes of the second, which essentially asks whether, in the light of the provisions of Annex VI, Part I, Point 2 of Regulation No 1408/71, and in particular subparagraph (a) thereof, periods of residence in the Netherlands prior to 1 January 1957 completed by a married woman after the age of 15 but before her marriage are to be treated as insurance periods completed under Netherlands legislation on general old-age insurance for purposes of the calculation of the old-age pension to which her husband is entitled. In order to give the Centrale Raad van Beroep a ruling which will be useful for the purposes of resolving the dispute in the main proceedings, it is therefore necessary to examine the second question even though, according to its wording, it is only asked in the event that the first question should be answered in the affirmative.

14 Mr Spruyt emphasizes the injustice of a situation in which the amount of an old-age pension depends upon the arbitrary factor of the date of the recipient's marriage. He argues that, in order to avoid such injustice, all periods of residence in the Netherlands completed by a married woman, even those prior to her marriage, should be taken into account.

15 In their written observations, the Verzekeringsbank, the Netherlands Government and the Commission state that because a married woman is not a 'recipient' of benefits under the Old-Age-Law, and is therefore not covered by Point 2 (a) of Part I of Annex VI to Regulation No 1408/71, she cannot benefit from the transitional provisions contained therein, which enable certain periods to be treated as

periods of insurance. The Verzekeringsbank also states that its practice of granting such an advantage by way of an extra-statutory concession, on the basis of an analogy with Point 2 (a), only applies to a woman who is herself in employment and cannot in any event be extended to a married woman who does not fall within the scope of Regulation No 1408/71 on her own account.

16 With regard to the question whether it is compatible with Article 51 of the EEC Treaty to refuse to apply the transitional provisions in a case such as this, the Verzekeringsbank also observes that a married woman who is not herself in employment is not covered by the principle of the free movement of persons or by Regulation No 1408/71.

17 In that respect the Commission has stated, both in its reply to a question put by the Court and at the hearing, that there is no justification for refusing to treat periods of residence in the Netherlands completed by a married woman as insurance periods under Point 2 (a) when that benefit is granted to her husband. According to the Commission, such a refusal, which is the result of a default in coordination in the annex in question, is discriminatory and contrary to the principle of the freedom of movement of persons.

18 In that respect it should be noted, first, that the provisions of Regulation No 1408/71 and in particular those of Annex VI thereto, were adopted to implement Article 51 of the EEC Treaty and must be interpreted in the light of the objective of Article 51, which is to contribute to the establishment of the greatest possible freedom of movement for migrant workers, which is one of the foundations of the Community.

19 Article 51 requires the Council to adopt such measures in the field of social security as are necessary to provide freedom of movement for workers by securing, *inter alia*, payment of benefits for persons resident in the territories of the Member States. The aim of Articles 48 to 51 would not be attained if, as a consequence of the exercise of their right to freedom of movement, workers were to lose the advantages in the field of social security guaranteed to them by the laws of a single Member State.

20 Consequently, the purpose of Article 10 (1) of Regulation No 1408/71 concerning the waiving of residence clauses is to guarantee the person concerned his right to social security benefits even after taking up residence in a different Member State and 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. As the Court has already ruled in its judgment of 7 November 1973 in Case 51/73 (*Bestuur der Sociale Verzekeringsbank* v *Smieja* [1973] ECR 1213), if that objective is to be attained, the protection given must necessarily extend to cover benefits which, while created within the confines of a particular scheme, such as that of the Old-Age Law, are given effect by increasing the value of the pension which would otherwise accrue to the recipient.

21 Special procedures for giving effect to that principle in the application of Netherlands legislation on general old-age insurance are laid down in Annex VI, Part I, Point 2 of Regulation No 1408/71. The rule contained in Article 10, whereby the application of residence clauses is set aside, cannot be applied without restriction to a general old-age insurance scheme in which the mere fact of residence in the Netherlands is sufficient qualification for insurance purposes.

22 Consequently, Point 2 (a) provides that, in the case of a person who, in accordance with subparagraph (f), has resided for six years after his 59th birthday in another Member State, periods before the entry into force of the Netherlands legislation are to be taken into account only if a supplementary condition is satisfied, namely that during the periods in question the person concerned resided in the Netherlands or pursued an activity as an employed person in that country. Such periods provide a sufficient link with the Netherlands scheme. The purpose of subparagraph (a) is to prevent the obstacles which might arise from Article 43 of the Old-Age Law from impeding the freedom of movement of those persons who, having resided or worked in the Netherlands, wish to move to another Member State.

23 In contrast, the purpose of Point 2 (c) concerning the case of a married woman whose husband is entitled to a pension under Netherlands legislation is, as the Commission, the Netherlands Government and the Verzekeringsbank have stated during the proceedings, to facilitate the free movement of workers from other Member States who move to the Netherlands whilst their wives remain in the country of origin, by enabling the periods during which the wives are resident in another Member State to be taken into account. Such periods may be treated as insurance periods provided that they are periods of the marriage and coincide with periods of insurance completed by the husband or periods which are to be taken into account in pursuance of Part 2 (a).

24 However, Point 2 of Part I of Annex VI to the regulation does not take special account of a married woman who, after she has resided or pursued an activity as an employed person in the Netherlands, moves with her husband to another Member State. Point 2 (c) merely enables periods of the marriage to be taken into account in such a case, and not periods of residence in the Netherlands before their marriage, which, in the case of the husband, may be covered by Point 2 (a).

25 There is no justification, under a general old-age insurance scheme such as that established by the Old-Age Law, in which residence is the sole qualification for insurance, for refusing to take such periods of residence into account as insurance periods in the case of a married woman when they are so treated in the case of a man and an unmarried woman. Such difference in treatment must be regarded as discriminatory and contrary to the fundamental principle of freedom of movement, as described above, since for a married woman it may constitute an obstacle to her accompanying her husband when he moves to another Member State.

26 The fact that the Old-Age Law makes provision for voluntary insurance, whereby it is possible to obtain the benefit of the national transitional provisions, is not sufficient to eliminate that obstacle. It is apparent from the explanations given to the Court that that option requires a married man to pay contributions based on the couple's joint income, even though he himself benefits from Point 2 (a), and thereby entails a supplementary financial burden.

27 It follows that the principle of the freedom of movement of persons and in particular Article 51 of the EEC Treaty require Point 2 (a) of Title I of Annex VI to be applied by analogy to a married woman, in accordance with the practice already adopted by the Verzekeringsbank where the married woman is herself an employed person.

28 The answer to the questions referred to the Court by the Centrale Raad van Beroep should therefore be that Point 2 (a) of Part I of Annex VI of Regulation No 1408/71 applies to a married woman so that, subject to the provisions of Point 2 (b), (d) and (f), periods before 1 January 1957 during which a married woman, who does not satisfy the conditions permitting her to have such periods treated as periods of insurance, resided in the territory of the Netherlands after the age of 15 or during which, whilst residing in the territory of another Member State, she pursued an activity as an employed person in the Netherlands for an employer

established in that country, must be considered as periods of insurance completed in application of Netherlands legislation on general old-age insurance.

Costs

29 The costs incurred by the Netherlands Government and 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, a step in the proceedings brought before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Centrale Raad van Beroep by orders of 24 January and 25 September 1984, hereby rules:

Point 2 (a) of Part I of Annex VI to Regulation No 1408/71 applies to a married woman so that, subject to the provisions of Point 2 (b), (d) and (f), periods before 1 January 1957 during which a married woman, who does not satisfy the conditions permitting her to have such periods treated as periods of insurance, resided in the territory of the Netherlands after the age of 15 or during which, whilst residing in the territory of another Member State, she pursued an activity as an employed person in the Netherlands for an employer established in that country, must be considered as periods of insurance completed in application of Netherlands legislation on general old-age insurance.

Everling Joliet

Due Galmot Kakouris

Delivered in open court in Luxembourg on 25 February 1986.

P. Heim
Registrar

U. Everling
President of the Fifth Chamber