JUDGMENT OF THE COURT (Third Chamber)
4 July 1985 *

In Case 104/84

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

J. W. M. Kromhout, Noordwijkerhout (Netherlands),

and

Raad van Arbeid [Labour Council], Leiden,

on the interpretation of Article 10 (1) 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), as amended by Regulation (EEC) No 878/73 of the Council of 26 March 1973 (Official Journal 1973, L 86, p. 1),

THE COURT (Third Chamber)

composed of: Lord Mackenzie Stuart, President, U. Everling and Y. Galmot, Judges,

Advocate General: M. Darmon
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

the Raad van Arbeid, Leiden, by its Chairman, W. G. H. van Hoogevest, and by S. van der Zee,

the Commission of the European Communities, by Manfred Beschel, Marie-Ann Coninsx and Francis Herbert,

and after hearing the Opinion of the Advocate General delivered at the sitting on 23 April 1985,

gives the following

* Language of the Case: Dutch.

JUDGMENT

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

Decision

1 By judgment of 11 April 1984, which was received at the Court Registry on 13 April 1984, the Raad van Beroep, The Hague, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions concerning the interpretation of Article 10 (1) 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, as amended by Regulation (EEC) No 878/73 of the Council of 26 March 1973.

2 The plaintiff in the main proceedings, Johanna W. M. Kromhout, a Netherlands national, divorced Thomas Beelitz, a German national, on 6 March 1981. The couple lived together in the Federal Republic of Germany until January 1980 when they separated. Mr Beelitz continued to live and work in Germany, whilst Mrs Kromhout returned to the Netherlands and settled there with the two children of the marriage who were born on 18 May 1973 and 3 December 1979 respectively.

3 From the second quarter of 1980 onwards Mrs Kromhout received from the Netherlands authorities family allowances in respect of her children under the Algemene Kinderbijslagwet [General Law on Family Allowances].

4 Under that law, which provides for the payment of family allowances to persons insured thereunder, an insured person means, according to Article 6 (1), 'any person who has reached the age of 15 and (a) is resident in the Netherlands or (b) is not so resident but is liable to income tax by virtue of an occupation pursued as an employed person in the Netherlands'.

5 Mr Beelitz, as an employed person residing in the Federal Republic of Germany, received from the German authorities family allowances in respect of the two children for the same period under the Bundeskindergeldgesetz [Federal Law on Child Allowances] in conjunction with Article 73 of Regulation (EEC) No 1408/71 of 14 June 1971 (Official Journal 1980, C 138, p. 1 — codified version).

6 Article 1 (1) of the aforesaid German law provides that 'any person who is ordinarily or habitually resident within the field of application of this law' is entitled to family allowances in respect of his or her children. Article 2 (5) of the law provides that 'children who are neither ordinarily nor habitually resident within the field of application of this law' are not covered by it. However, the latter provision is applied having regard to Article 73 of Regulation No 1408/71 which provides that:

'A worker subject to the legislation of a Member State ... shall be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State, as though they were residing in the territory of the first State'.

7 In the divorce proceedings, Mr Beelitz was ordered to pay maintenance to Mrs Kromhout and to make a contribution towards the cost of providing for and bringing up the two children of some HFL 200 per child per month. It is apparent from the documents before the Court that he paid that money to Mrs Kromhout but did not pay over to her the family allowances which he received in respect of the two children.

8 By decision of 7 October 1982 the Raad van Arbeid [Labour Council], Leiden, suspended the family allowances payable under the relevant Netherlands legislation as from the second quarter of 1982 except for the excess over the amount of the family allowances received by Mr Beelitz in the Federal Republic of Germany. In that regard the court relied on Article 10 of Regulation No 574/72 of the Council of 21 March 1972. Paragraph (1) of that article, as amended by Regulation No 878/73 of the Council of 26 March 1973 provides as follows:

'Entitlement to family benefits or family allowances due under the legislation of one Member State only, 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) benefits are due in pursuance of Article 73 of 74 of the regulation . . . '.

9 On 15 November 1982 Mrs Kromhout brought an action before the Raad van Beroep, The Hague, for the annulment of the decision of the Raad van Arbeid and for a declaration either that she was entitled to the full Netherlands family

allowances in respect of her two children or, alternatively, that the Raad van Arbeid must give a fresh decision in conformity with the judgment of the Raad van Beroep.

10 Taking the view that the dispute raised certain questions concerning the interpretation of Article 10 (1) of Regulation No 574/72, the Raad van Beroep, The Hague, stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is it sufficient for the application of the first sentence of Article 10 (1) (a) of Regulation (EEC) No 574/72 that the child in respect of whom family allowances are paid (as a member of the family) is a person covered by the relevant regulations, or must all those who are entitled to family allowances pursuant to national law or to whom family allowances are paid be persons covered by those regulations?

(2) If the answer to Question 1 is that it is not necessary for all those who are entitled to family allowances or to whom family allowances are paid to be persons covered by the relevant regulations, does it follow that under the first sentence of Article 10 (1) (a) of Regulation (EEC) No 574/72 family allowances due exclusively under national law to an insured person who is not a person covered by those regulations can or may be suspended?

(3) May family allowances that are due exclusively under national law in respect of a member of the family who, by virtue of another legal system, is a person covered by the relevant regulations be suspended by the application of the first sentence of Article 10 (1) (a) of Regulation (EEC) No 574/72?

(4) Is Article 10 (1) of Regulation (EEC) No 574/72 applicable in relation to legislation such as the Netherlands Algemene Kinderbijslagwet, under which the right to family allowances is subject to the condition of insurance, if such insurance exists by virtue of residence alone?'

First question

11 In its first question the national court asks essentially whether the first sentence of Article 10 (1) (a) of Regulation No 574/72 of the Council of 21 March 1972, as amended by Regulation No 878/73 of the Council of 26 March 1973, applies where a child in respect of whom family benefits or family allowances are due is, as a member of the family of one of the recipients of such benefits or allowances, a person covered by the Community legislation on social security for employed persons, even where the other recipient who is also entitled to family benefits or family allowances in respect of the same child is not so covered.

12 In that regard the Raad van Arbeid and the Commission, which alone submitted observations to the Court, consider that the aim of the provision in question is to prevent the overlapping of family allowances in respect of the same children for the same period, and that there is no need to ascertain who is the recipient of those allowances or the number of persons to whom they are to be paid. Accordingly, in their view, for that provision to apply it is sufficient for one of the spouses to be a worker within the meaning of Regulation No 1408/71, with the result that the worker and the worker's children are persons covered by the relevant legislation. The fact that the worker's marriage has been dissolved is immaterial.

13 In order to answer the question submitted, it is necessary in the first place to clarify the purpose of the Community legislation on family benefits and family allowances. Useful guidance to that end may be obtained from the provisions of the basic regulation, namely Regulation (EEC) No 1408/71 of the Council of 14 June 1971. Under Article 1 (u) (i) of that regulation, 'family benefits' means 'all benefits in kind or in cash intended to meet family expenses'. The same article provides in subparagraph (u) (ii) that 'family allowances' means 'periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family'.

14 It is clear from those provisions that family benefits or family allowances are intended to provide social assistance for workers with dependent families in the form of a contribution by society towards their expenses. The rule against overlapping of benefits at issue is designed therefore to prevent duplication of the compensation for those expenses, an excess payment to the worker's family which would not be justified. Accordingly, the rule must be interpreted as having the effect of precluding the payment of parallel social security benefits for one and the same situation in respect of one and the same period.

15 It is undeniable that a situation of the kind which has arisen in this case may lead to the payment of excess compensation for family expenses, inasmuch as the children in question acquire in respect of the same period parallel rights to family allowances, by virtue of the mother and by virtue of the father. Therefore, the relevant rule against overlapping benefits must be interpreted as applying to a situation of that kind whenever those children are persons covered by Regulation No 1408/71, as members of the family of the working parent, without there being any need to ascertain whether or not the other parent, who does not carry on a professional or trade activity, forms part by virtue of his or her marital status of the family of the first worker and is consequently also a person covered by the legislation in question.

16 Moreover, that conclusion is confirmed by the considerations relied upon by the Court in its judgment of 3 February 1983 in Case 149/82 (*Robards* v *Insurance Officer* [1983] ECR 171). In that judgment the Court pointed out, in relation to the second sentence of Article 10 (1) (a) of Regulation No 574/72, that where both parents carry on a professional or trade activity 'the problem of overlapping benefits which the provision in question is intended to resolve is not to be answered differently according to whether or not the marriage bond still exists between the two parents who might, depending on the case, be entitled to benefits in respect of the same child. In view of the purpose of that provision, it should not be interpreted in a restrictive manner'. Those considerations apply with equal force to the first sentence of Article 10 (1) (a) of the regulation, which is at issue in this case, since the aim of both provisions is to introduce a consistent rule against overlapping benefits which applies both when only one parent carries on a professional or trade activity (first sentence) and when both parents carry on a professional or trade activity (second sentence).

17 Accordingly, the answer to the first question must be that the first sentence of Article 10 (1) (a) of Regulation No 574/72 of the Council of 21 March 1972, as amended by Regulation No 878/73 of the Council of 26 March 1973, applies where a child in respect of whom family benefits or family allowances are due is, as a member of the family of one of the recipients of such benefits or allowances, a person covered by the Community legislation on social security for employed persons, without there being any need to ascertain whether the other recipient who is also entitled to family benefits or family allowances in respect of the same child is also covered by that legislation.

Second and third questions

18 In the second and third questions, which should be answered together, the national court asks essentially whether, and if so to what extent, the aforesaid provision makes it possible to suspend family benefits or family allowances payable under the legislation of one Member State alone which are awarded to a recipient who is not himself covered by the Community legislation on social security for employed persons in respect of a child who is so covered by virtue of a member of the family who is a worker.

19 The Raad van Arbeid observes that the provision in question deals with the suspension of the right to family benefits or family allowances payable under legislation which does not make that right conditional on the existence of insurance or employment. In its view, that means that the benefits or allowances in question can only be those payable under national legislation, since the relevant Community rules cannot enable a right of that kind to be acquired independently of the pursuit of a professional or trade activity.

20 The Commission points out that the application of the provision in question can lead to the suspension of family benefits or allowances payable under national legislation alone, provided however that the award of the highest amount payable under national law is guaranteed. It follows, in its view, that where the amount of benefits actually received in the first Member State is lower than the amount of benefits provided for by the legislation of the other Member State alone, the recipient is entitled to receive from that State a supplement equal to the difference between the two amounts.

21 It must be remembered that, according to the well-established case-law of the Court based on the fundamental principle of freedom of movement for workers and on the purpose of Article 51 of the EEC Treaty, a rule designed to prevent the overlapping of family allowances is applicable only to the extent to which it does not, without cause, deprive those concerned of an entitlement to benefits conferred on them by the legislation of a Member State. Accordingly, where the amount of the allowances the payment of which is suspended exceeds that of the allowances received by virtue of the pursuit of a professional or trade activity, the rule on overlapping benefits contained in Article 10 (1) (a) of Regulation No 574/72 should be applied only in part and the difference between those amounts should be granted as a supplement (see, for example, the judgment of 19 February 1981 in Case 104/80 *Beeck* v *Bundesanstalt für Arbeit* [1981] ECR 503).

22 It follows that Community law does not preclude the suspension, in the event of overlapping, of benefits or allowances payable under the legislation of one Member State alone, provided however that the amount suspended is limited to the amount in respect of which the benefits overlap.

23 The answer to the second and third questions must therefore be that the first sentence of Article 10 (1) (a) of Regulation No 574/72, as amended, makes it possible to suspend family benefits or family allowances payable under the legislation of one Member State alone which are awarded to a recipient who is not covered by the Community legislation on social security for employed persons in respect of a child who is so covered by virtue of a member of the family who is a worker, provided however that the amount suspended is limited to the amount in respect of which the benefits overlap.

Fourth question

24 In the fourth question the national court asks essentially whether the aforesaid provision also applies where family benefits or family allowances are payable under the legislation of one Member State alone, according to which acquisition of the right to those benefits or allowances is conditional on residence alone.

25 It is clear from the grounds set out in the judgment making the reference that the national court seeks a ruling which will enable it to determine whether a system such as that established by the Netherlands Algemene Kinderbijslagwet falls within the ambit of the provision in question, in so far as that provision refers only to the right to family benefits or family allowances acquired independently of the existence of insurance or employment. The national system at issue in this case makes entitlement to family allowances conditional on insurance but treats as insured all persons who have reached a certain minimum age and who are either resident in the Netherlands or are liable to income tax by virtue of their pursuit of an occupation there. Hence the structure of the system is such that it does not presuppose that there must be a link between the right to benefits and the existence of an income or an occupation.

26 The Raad van Arbeid and the Commission consider that since the provision in question relies on the absence of conditions of insurance or employment, the acquisition of a right to benefits or allowances must be conditional on residence alone. That is the case, in their view, in a system such as that at issue in this instance which does not lay down any conditions regarding insurance, such as the length of the period of insurance, and in which contributions are relatively unimportant since the amount thereof does not affect the amount of benefit and the right to benefits arises independently of payment of the contribution.

27 That view must be upheld. One of the principles underlying the Community rules against overlapping benefits is that a right acquired by virtue of the pursuit of a professional or trade activity takes precedence over a right the acquisiton of which does not depend on the pursuit of such an activity. That is clear from the general scheme of the rules against overlapping in the case of family benefits or family allowances and, more particularly, from the fact that Article 10 (1) of Regulation No 574/72 supplements the rule in Article 76 of Regulation No 1408/71 which provides that 'entitlement to family benefits or family allowances under the provisions of Articles 73 and 74 shall be suspended if, by reason of the pursuit of a professional or trade activity, family benefits or family allowances are also payable under the legislation of the Member State in whose territory the members of the family are residing'. It follows that the provision in question must be interpreted as also applying to a national system which, whilst restricting the right to family benefits or family allowances to persons insured under it, makes the acquisition of that right conditional on residence alone.

28 That conclusion is confirmed by the origin of Article 10 (1) of Regulation No 574/72. That provision, as amended by Regulation No 878/73, was adopted precisely in order to take account of the specific features of the national legislation of the three new Member States of the Community which based the right to family allowances exclusively on the criterion that the recipient had to be resident within national territory but did not contain any internal or external provision against overlapping.

29 The answer to the fourth question must therefore be that the first sentence of Article 10 (1) (a) of Regulation No 574/72, as amended, also applies where family benefits or family allowances are payable under the legislation of one Member State alone, according to which acquisition of the right to those benefits or allowances is conditional on residence alone.

Costs

30 The costs incurred by the Commission of the European Communities, which has 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, The Hague, by judgment of 11 April 1984, hereby rules:

(1) The first sentence of Article 10 (1) (a) of Regulation (EEC) No 574/72 of the Council of 21 March 1972, as amended by Regulation (EEC) No 878/73 of the Council of 26 March 1973 (Official Journal 1973, L 86, p. 1), applies where a child in respect of whom family benefits or family allowances are due is, as a member of the family of one of the recipients of such benefits or allowances, a person covered by the Community legislation on social security for employed persons, without there being any need to ascertain whether the other recipient who is also entitled to family benefits or family allowances in respect of the same child is also covered by that legislation.

(2) The aforesaid provision makes it possible to suspend family benefits or family allowances payable under the legislation of one Member State alone which are awarded to a recipient who is not covered by the Community legislation on social security for employed persons in respect of a child who is so covered by virtue of a member of the family who is a worker, provided however that the amount suspended is limited to the amount in respect of which the benefits overlap.

(3) The aforesaid provision also applies where family benefits or family allowances are payable under the legislation of one Member State alone, according to which acquisition of the right to those benefits or allowances is conditional on residence alone.

Mackenzie Stuart Everling Galmot

Delivered in open court in Luxembourg on 4 July 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President