JUDGMENT OF THE COURT
27 OCTOBER 1971[1]

Michel Janssen
v Alliance Nationale des Mutualités Chrétiennes
(Reference for a preliminary ruling
by the Arbeidsrechtbank (Labour Court) Tongeren)

'Self-employed persons'

Case 23/71

Summary

1. *Social security for migrant workers — Assimilated worker — Meaning*
(Regulation No 3 of the Council, Article 4; Regulation No 4 of the Council, Article 1)

2. *Social security for migrant workers — Self-employed persons — Right to benefit — Insurance periods completed in a Member State under a social security scheme for wage-earners — Taking these into consideration in applying legislation to another Member State — Conditions*

1. The concept of 'assimilated' worker used in Regulations Nos 3 and 4 of the Council includes every worker who is entitled under national legislation to benefit under a social security scheme which insures wage-earners as a whole against one or more risks, provided that such entitlement ensures that he receives protection against the risk concerned comparable to that provided under the general scheme.

2. Where the legislation of a Member State concerning the benefits available to self-employed persons allows the insurance periods completed by the person concerned under the social security scheme for wage-earners to be taken into account in establishing the right to benefit, the insurance periods completed as a wage-earner under the social security scheme of another Member State must be taken into account in applying that legislation.

In Case 23/71

Reference to the Court under Article 177 of the EEC Treaty by the Arbeidsrechtbank (Labour Court) Tongeren for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Dutch.

MICHEL JANSSEN, a self-employed person, resident at Rekem,

and

ALLIANCE NATIONALE DES MUTUALITÉS CHRÉTIENNES, Brussels

on the interpretation to be placed on the concept of 'assimilated' workers referred to in certain provisions of Regulations Nos 3 and 4 of the Council on social security for migrant workers,

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher, Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Monaco (Rapporteur) and P. Pescatore, Judges,

Advocate-General: K. Roemer
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. Mr Michel Janssen worked in France as an agricultural wage-earner from 16 October 1967 to 31 December 1969. During that period he was a regular contributor in that country to the Mutualité Sociale Agricole de la Somme. After 1 January 1970 Mr Janssen ceased to work in France and became a 'helper' on his father's farm. With effect from that date he joined the Landsbond der Christelijke Mutualiteiten as a self-employed worker. During that same January his wife was admitted to the Bilzen Hospital for the birth of a child. When Mr Janssen applied to the aforesaid insurance institutions for re-imbursement of the expenses involved, the last mentioned institution rejected his claim on the ground that he had not completed the waiting period laid down under Article 25 of the Royal Decree of 30 July 1964 on sickness insurance of self-employed persons, which was six months. Mr Janssen claimed that, by virtue of Regulations Nos 3 and 4 of the EEC, the rejection was invalid.

By judgment of 30 April 1971 the Arbeidsrechtbank Tongeren, to which he applied for redress, decided to stay proceedings and, under Article 177 of the Treaty, requested the Court:

> 'to give a preliminary ruling on the interpretation of the words "and assimilated" appearing in EEC Regulations Nos 3 and 4 and more particularly on the question whether helpers regarded under Belgian social security legislation as self-employed persons

come within the ambit of these regulations in as much as they are assimilated to workers bound to an employer under a contract of service.'

2. The judgment making the reference was received at the Court Registry on 10 May 1971.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice annexed to the EEC Treaty, written observations were submitted by Mr Michel Janssen, represented by his Counsel, André Janssen, and by the Commission of the European Communities, represented by its Legal Adviser, Robert C. Fischer acting as Agent.

After 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 enquiry.

The Commission submitted its oral observations at the hearing on 21 September 1971.

The Advocate-General delivered his opinion at the hearing on 5 October 1971.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

The observations submitted under Article 20 of the Protocol on the Statute of the Court may be summarized as follows:

A — Observations submitted by Mr Janssen

Mr *Janssen's* observations are as follows:

(a) *Belgian national legislation*

It is clear from this legislation, especially Article 26 (4) of the Royal Decree of 30 July 1964, that a period of paid employment completed in Belgium counts, so to speak, towards the waiting period for a self-employed person.

(b) *Community rules*

Both the letter and the spirit of Community rules require that a period of paid employment completed in France shall be assimilated to a period of paid employment completed in Belgium.

— As regards the *letter* of these rules attention is especially drawn to Articles 9 (1), 16, 17 and 18 of Regulation No 3 and to Articles 7 (2), 13, 14, 15 and 16 of Regulation No 4 of the Council. Moreover, by virtue of Article 5 (a) of Regulation No 3, that regulation replaces the provisions of the general Franco-Belgian agreement of 17 January 1948, Articles 5 (3) and 6 (2) of which are especially relevant. As a result of such replacement the person concerned should be entitled to at least the same benefits as under the agreement.

— As regards the *spirit* of the Community rules, it is clear from the fundamental principles in Article 51 of the Treaty, which Regulation No 3 was adopted to implement, that the object of the arrangements laid down in that regulation was specifically to prevent periods of work completed in a Member State from being regarded as 'lost' or 'not reckonable' as far as the worker is concerned if he changes his place of residence or of work. It is precisely to avoid this unfavourable result that Article 51 of the Treaty and Regulation No 3 provide for 'aggregation' of the completed periods of work.

Furthermore, Regulations Nos 3 and 4 of the Council apply to the circumstances of the case, first because an 'agricultural helper' falls within the concept of 'assimilated worker' referred to in Regulation No 3 and, secondly, because the wording of Article 4 of the regulation covers, *inter alios*, 'assimilated workers' who have been subject to the legislation of one or more Member States, together with the members of their families and their survivors. In

the present case the insured person was, from 16 October 1967 to 31 December 1969, subject to French 'legislation'.

B — Observations submitted by the Commission of the European Communities

After reviewing the different aspects and the scope of the principle which appears to the Commission to have been applied by the Court on the subject of assimilation (in Cases 75/63 and 19/68), the *Commission of the European Communities* states that, according to these decisions, the question whether, in a particular case, a person is assimilated to a wage-earner ultimately depends on national law.

Although, under Article 177 of the EEC Treaty, the Court is not empowered 'to interpret the rules of national law', it cannot, however, in endeavouring to lay down guide-lines to help the national court to reach a decision, avoid looking at the national provisions which are relevant to the question before it.

From the Belgian legislation which is relevant to the issue in dispute, it is clear that:

— the concepts of self-employed person and of helper in connexion with social security were clearly defined by Royal Decree No 38 of 27 July 1967 (Belgisch Staatsblad of 29 July 1967) laying down social security regulations for the benefit of self-employed persons and of helpers;

— self-employed persons and helpers as so defined are, by way of an extension of the general scheme, subject to compulsory insurance against sickness and invalidity; on this point reference is made to Article 22 of the Law of 9 August 1963 (Belgisch Staatsblad of 1 and 2 November 1963), as amended by Article 27 of the Royal Decree of 27 July 1967, and to the first paragraph of Article 1 of the Royal Decree of 30 July 1964 (Belgisch Staatsblad of 13 August 1964) as subsequently amended on several occasions, the last amendment being made by the Royal Decree of 29 June 1970 (Belgisch Staatsblad of 11 July 1970).

Although, *prima facie*, these provisions seem to indicate that the present case involves a situation covered by the case-law of the Court, namely, an extension of a general scheme of insurance against one or more contingencies to a category of persons other than wage-earners, a closer study of this legislation reveals that:

— the extension of the general scheme of social security against sickness and invalidity to self-employed persons, such as that provided under the first paragraph of the aforementioned Royal Decree of 30 July 1964 (as amended by Royal Decree of 29 June 1970), is designed solely to make available certain benefits provided under the general scheme (and, in terms of health care, these are confined to benefits associated with 'serious illnesses'). As regards sickness and invalidity insurance, therefore, self-employed persons do not in Belgium enjoy the same protection as wage-earners. It is, accordingly, difficult to accept that, in this field, they are assimilated to wage-earners. This accords, moreover, with the formula adopted by the Council of the European Communities in the Regulation of 14 June 1971 (OJ 1971, L 149; OJ (English Special Edition) 1971 (II), p. 416) on the application of social security schemes to employed persons and their families moving within the Community (in the case of Belgium, see especially Annex V to that instrument);

— under the above-quoted Royal Decree of 27 July 1967, the introduction of social security regulations shall be effected:

  — by integration of the conditions applicable in the three sectors: family allowances, pensions and survivors' pensions, sickness and invalidity (Chapter I);

— by integration of the methods of affiliation and contribution: affiliation to a single organization, single contribution, etc. (Chapter II);
— by standardization of the structures, especially by the creation of a national social security office for self-employed persons (Chapter V).

On the subject of benefits and the financial contribution made by the State, the Royal Decree refers to the laws providing for insurance schemes for self-employed persons in the three sectors concerned (cf. Article 18 (3) of the Royal Decree which refers to the Law of 9 August 1963 setting up and providing for a system of compulsory insurance against sickness and invalidity). Thus, it is clear from these provisions as a whole that, although the general sickness and invalidity insurance scheme has been extended to self-employed persons, the extension does not, however, amount to assimilation. Assimilation is only partial because:

— first, self-employed persons are protected to a lesser degree than are wage-earners under the general scheme;
— secondly, it was designed for the purpose of setting up special regulations for self-employed persons covering the three risks against which they are already insured and contriving expressly to differentiate between the position of self-employed persons and that of wage-earners in respect of social security, and to set up a separate and independent system for them.

On the basis of these comments, the Commission takes the view that the reply to the question asked should be in the following terms:

'There is no justification for treating as "assimilated to wage-earners" persons, such as helpers, to whom there has been extended under the provisions of national law, entitlement to benefit under a general scheme of social security insuring wage-earners against one or more risks, in cases where such extension only partly covers the risk involved and the effect of which is to set up a separate and independent scheme for such persons.'

Grounds of judgment

1 By decision of 30 April 1971, received at the Court Registry on 10 May 1971, the Arbeidsrechtbank Tongeren referred to the Court under Article 177 of the EEC Treaty a question of interpretation concerning the word 'assimilated' used in Regulations Nos 3 and 4 of the EEC Council.

2 The Court is first asked to rule whether the concept of 'assimilated' workers within the meaning of the said Council regulations can apply to 'helpers' whom Belgian legislation on the subject of sickness and invalidity insurance treats as self-employed persons.

3 The scope of Regulation No 3 is set out, as regards the persons to whom it applies, by Article 4, which provides that 'the provisions of this Regulation shall apply to wage-earners or assimilated workers who are or have been subject to the legislation of one or more of the Member States . . .'.

4 Reference is made to that provision in Article 1 of Regulation No 4, which was adopted to implement Regulation No 3.

5 This provision is based on a wide conception of the persons to whom it applies inasmuch as it subjects to the provisions of the regulation not only wage-earners within the strict sense of the word but in addition all those assimilated to such workers.

6 In this respect, Article 4 follows a general tendency of the social law of Member States to extend the benefits of social security in favour of new categories of persons by reason of identical risks.

7 However, the exact measure of this assimilation can only be determined in terms of the national legislations to which Regulation No 3 refers.

8 Such an assimilation takes place on every occasion on which, as the result of the effect of national legislation, the provisions of a general scheme of social security are extended to a category of persons other than the wage-earners referred to by the said regulation, whatever may be the forms or methods employed by the national legislature.

9 The extension of these provisions must entitle those benefiting from it to a degree of protection against one or more risks comparable to that granted in respect of the risk concerned under the general scheme.

10 The question submitted may, however, also be intended to determine whether a person who is treated as 'helper' under Belgian legislation governing sickness and invalidity insurance can avail himself of completed insurance periods as a wage-earner under the legislation of another Member State, in order to claim advantages, such as being excused a qualifying period, which, under the provisions on the subject of sickness and invalidity insurance for self-employed persons, are added to the periods previously completed under Belgian legislation as a wage-earner.

11 Articles 48 to 51 of the Treaty, which establish freedom of movement for workers gave a Community meaning to the concept of worker.

12 As expressly stated in Article 4 (1) of the Regulation No 3, the expression 'wage-earners or assimilated workers', used in the regulation and designed to clarify the concept of 'workers', covers not only those who, in this capacity, are subject to the legislation of one or more Member States but also those who 'have been' so subject.

13 The object of Articles 48 to 51 would not be achieved but would be missed if the insurance period completed by a worker in accordance with the legislation of one Member State, were, as far as he was concerned, lost if, in taking advantage of the freedom of movement secured for him, he changes

his place of work and thus becomes subject to the social security system of another Member State.

14 For the purposes of admission to compulsory insurance, this conclusion is further confirmed by Article 9 (1) of Regulation No 3, which provides that the insurance periods and assimilated periods completed under the legislation of one or more Member States other than that in which the insured is permanently resident shall, in so far as is necessary, be reckoned as insurance periods completed under the legislation of the latter State.

15 It therefore follows that when the legislation of a Member State governing the benefits to be granted to self-employed persons allows insurance periods completed by the insured person under the social security scheme for wage-earners to be taken into account in establishing a right to benefit, the insurance periods completed as a wage-earner under the social security scheme of another Member State must be taken into account in applying that legislation.

Costs

16 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable and 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 as to 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 oral 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 48 to 51;
Having regard to Regulation No 3 of the Council 'on social security for migrant workers';
Having regard to Regulation No. 4 of the Council 'on implementing procedures and supplementary provisions in respect of Regulation No 3 on social security for migrant workers';
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20 thereof;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the question submitted to it by the Arbeidsrechtbank Tongeren in accordance with the decision taken by that court on 30 April 1971, hereby rules:

1. **The concept of an 'assimilated' worker used in Regulations Nos 3 and 4 of the Council includes a 'helper', within the meaning of Belgian legislation, considered as a self-employed person in so far as, under that legislation, the benefits of the social security scheme provided for wage-earners as a whole against one or more risks is extended to him, provided that, in respect of the risk concerned, the extension ensures that he receives protection comparable to that provided under the general scheme;**

2. **When the legislation of a Member State governing the benefis available to self-employed persons allows the insurance periods completed by the insured person under the social security scheme for wage-earners to be taken into account in establishing the right to benefit, the insurance periods completed as a wage-earner under the social security scheme of another Member State must be taken into account in applying that legislation.**

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 27 October 1971.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 5 OCTOBER 1971[1]

Mr President,
Members of the Court,

Arising out of proceedings brought before it, the Belgian Labour Court of Tongeren is asking you to interpret Regulation No 3 of the Council on social security for migrant workers (OJ No 30 of 16.12.1958, p. 561).

The relevant facts are as follows. Mr Janssen, the plaintiff in the main action, who is of Belgian nationality and is at present resident in Belgium, worked in France from 16 October 1967 to 31 December 1969 as an agricultural wage-earner and in this capacity was insured there with the Mutualités Sociale Agricole de la Somme against the contin-

1 — Translated from the German.