JUDGMENT OF THE COURT (Second Chamber)

26 October 2006 *

In Case C-192/05,

REFERENCE for a preliminary ruling under Article 234 EC by the Centrale Raad van Beroep (Netherlands), made by decision of 22 April 2005, received at the Court on 29 April 2005, in the proceedings

K. Tas-Hagen,

R.A. Tas

v

Raadskamer WUBO van de Pensioen- en Uitkeringsraad,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen, P. Kūris, R. Silva de Lapuerta (Rapporteur) and L. Bay Larsen, Judges,

* Language of the case: Dutch.

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 February 2006,

after considering the observations submitted on behalf of:

— the Raadskamer WUBO van de Pensioen- en Uitkeringsraad, by B. Drijber, advocaat,

— the Netherlands Government, by H.G. Sevenster and C. ten Dam, acting as Agents,

— the Lithuanian Government, by D. Kriaučiūnas, acting as Agent,

— the United Kingdom Government, by C. Gibbs, acting as Agent, and M. Chamberlain, Barrister,

— the Commission of the European Communities, by M. Condou-Durande and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 March 2006,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 18(1) EC.

2 The reference has been made in the course of proceedings between, on the one hand, Mrs Tas-Hagen and Mr Tas and, on the other, the Raadskamer WUBO van de Pensioen- en Uitkeringsraad (Pension and Benefit Board Advisory Chamber on the Law on Benefits for Civilian War Victims, hereinafter 'the PUR') concerning the latter's refusal to grant them various benefits to which they claim to be entitled as civilian war victims.

The national legislation

3 The national legislation consists of the Law on Benefits for Civilian War Victims 1940-1945 (Wet uitkeringen burger-oorlogsslachtoffers 1940-1945) of 10 March 1984 (*Staatsblad* 1984, No 94, hereinafter the 'WUBO').

4 Article 2(1) of the WUBO states:

'1. For the purposes of the application of this Law and the provisions for its implementation, the term "civilian war victims" refers to:

...

(f) all civilians who sustained mental or physical injury resulting in permanent disability or death, as a result of the disturbances — comparable both in their nature and their consequences to the circumstances outlined under (a), (b), (c) and (d) — which followed the war and which lasted until 27 December 1949 in the former Dutch East Indies.'

5 Under Article 3 of the WUBO:

'1. This Law applies to:

(a) all civilian war victims — as defined in Article 2(1) — during the years 1940 to 1945 or in the following years, on the condition that, having held Netherlands nationality at the time of the event, ... they hold Netherlands nationality and reside in the Netherlands at the time at which the application is submitted;

(b) all civilian war victims — as defined in Article 2(1) — during the years 1940 to 1945 or in the following years, on the condition that, having been foreign nationals resident, at the time of the events, in the Netherlands, where they were resident for reasons other than the following of the orders of an enemy power, they have held Netherlands nationality and have lived uninterruptedly in the Netherlands until the time at which the application is submitted;

(c) all civilian war victims — as defined in Article 2(1) — during the years 1940 to 1945 or in the following years, on the condition that, having been foreign nationals resident, at the time of the events, in the former Dutch East Indies, where they were resident for reasons other than the following of the orders of an enemy power, they held Netherlands nationality and lived uninterruptedly in the

Dutch East Indies, in Indonesia, or in the former Dutch New Guinea until the date of their arrival in the Netherlands, and at the latest until 1 April 1964, before becoming resident in the Netherlands and living there uninterruptedly until the time at which the application is submitted ...

2. If a person fulfils the requirements laid out in paragraph 1(b) and (c), or his immediate family members ... have acquired Netherlands nationality during their uninterrupted stay in the Netherlands, or in the former Dutch East Indies, in Indonesia, or in the former Dutch New Guinea, their stay need not have been uninterrupted, on the condition that the applicant or his immediate family members retain Netherlands nationality until their death and are resident in the Netherlands at the time at which the application is submitted.

3. If the person who fulfils the criteria laid down in paragraph 1(a), and paragraph 2, or his immediate family members ... become resident in the Netherlands after the date of entry into force of the present Law, they shall be deprived of the right to benefits under the present Law if they again become resident elsewhere before five years have elapsed.

4. "Arrival in the Netherlands" for the purposes of paragraph 1(c) ... must be understood as meaning, inter alia, the filing of an application for authorisation to reside in the Netherlands, on the condition that this application was successful.

5. "Uninterrupted stay" for the purposes of paragraph 1 must be understood as meaning any stay that has not been interrupted by a stay of more than one year in another country.

6. In cases where the non-application of the present Law would lead to obvious hardship, the Pension and Benefit Board can extend the application of the Law to any civilian who was, in the years 1940 to 1945, or in the following years, a war victim within the meaning of Article 2(1), as well as to the civilian's immediate family members, even if the criteria laid down in paragraphs 1, 2 or 3 are not fulfilled.'

6 The 'hardship clause' provided for in Article 3(6) of the WUBO allows for derogations in certain cases from the nationality and residence conditions, to the extent to which there is a particular link between the civilian war victim and Netherlands society at the time of the war and at the time when the application is submitted. The general criterion to be applied in such cases is that the residence outside the Netherlands must be attributable to circumstances which, viewed objectively, lie outside the immediate control of the person concerned, such as, in particular, border realignments or medical reasons.

The main proceedings and the question referred for preliminary ruling

7 Mrs Tas-Hagen was born in 1943 in what was at the time the Dutch East Indies and came to the Netherlands in 1954. In 1961 she acquired Netherlands nationality. In 1987, after having become incapable of working and thereby forced to terminate her professional career, she took up residence in Spain.

8 In December 1986, while still resident in the Netherlands, Mrs Tas-Hagen applied, under the WUBO, for the grant of a periodic benefit and an allowance to cover various expenses. This application was based on health problems resulting from the events that she had experienced in the Dutch East Indies during the Japanese occupation and during the Bersiap period following that occupation.

9 By decision of 5 June 1989, the PUR rejected the application. According to this decision, which is in line with the opinion given by a medical consultant, Mrs Tas-Hagen had not suffered any injury capable of resulting in permanent disability, with the result that she could not be regarded as a civilian war victim within the terms of the WUBO. Mrs Tas-Hagen did not appeal against this decision.

10 In 1999 Mrs Tas-Hagen filed a new application seeking recognition as a civilian war victim and the grant of a periodic benefit and a further allowance to cover expenses to improve her living conditions.

11 By decision of 29 September 2000, the PUR rejected the application. Taking account of the guidelines applicable from 1 July 1998 to establish permanent disability, the PUR, on the basis of the opinion of its medical consultants, recognised the applicant's status as a civilian war victim. However, as the applicant was resident in Spain when her application was submitted, the PUR took the view that the territorial requirement laid down in the WUBO had not been satisfied. The decision also stated that the circumstances of the case were not sufficiently special to justify application of the hardship clause. By decision of 28 December 2001, the PUR dismissed the objection lodged by Mrs Tas-Hagen against the decision of 29 December 2000.

12 Mr Tas was born in the Dutch East Indies in 1931. In 1947 he took up residence in the Netherlands. From 1951 to 1971 he held Indonesian nationality. He regained Netherlands nationality in 1971.

13 In 1983 Mr Tas's term of employment as an official of the Hague municipal council ended, and he was declared wholly incapable of work on grounds of mental health. In 1987 Mr Tas took up residence in Spain.

14 In April 1999 Mr Tas submitted an application under the WUBO for, inter alia, the grant of a periodic benefit and an additional allowance to improve his living conditions. By decision of 28 December 2000, the PUR rejected this application. It stated that, although Mr Tas was recognised as a civilian war victim, he did not satisfy the territorial condition laid down in the WUBO, since, at the time at which he submitted the application, he was resident in Spain. The PUR also took the view that the circumstances were not sufficiently special to justify application of the hardship clause. By decision of 28 December 2001, the PUR dismissed the objection lodged by Mr Tas against the decision of 28 December 2000 on the ground that it was unfounded.

15 Mrs Tas-Hagen and Mr Tas thereupon commenced legal proceedings challenging the decisions to reject their applications, contending inter alia that the condition of residence in the Netherlands at the time of the applications, laid down in Article 3 of the WUBO, is contrary to the Treaty provisions on citizenship of the Union.

16 In those circumstances, the Centrale Raad van Beroep (Higher Social Security Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Does Community law, in particular Article 18 EC, preclude national legislation under which, in circumstances such as those in the main proceedings, the grant of a benefit for civilian war victims is refused solely on the ground that the person concerned, who holds the nationality of the relevant Member State, was resident, not in the territory of that Member State, but in the territory of another Member State at the time when the application was submitted?'

The question referred for preliminary ruling

The applicability of Article 18(1) EC

17 In order to provide a useful answer to the question referred, it must first be determined whether a situation such as that in the main proceedings falls within the scope of Community law, and in particular of Article 18(1) EC.

18 Regarding the scope *ratione personae* of that provision, suffice it to state that, under Article 17(1) EC, every person holding the nationality of a Member State is a citizen of the Union. Furthermore, Article 17(2) EC attributes to citizens of the Union the rights conferred and duties imposed by the Treaty, including those mentioned in Article 18(1) EC.

19 As Netherlands nationals, Mrs Tas-Hagen and Mr Tas enjoy the status of citizens of the Union under Article 17(1) EC and may therefore benefit from the rights conferred on those having that status, such as, inter alia the right to move and to reside freely within the territory of the Member States conferred by Article 18(1) EC.

20 As to the material scope of Article 18(1) EC, the question of the applicability *ratione materiae* of this provision to the main proceedings was raised in the course of the proceedings before the Court. According to the PUR and some of the Member States which submitted observations, that provision can be relied upon only if, over and above the mere exercise of the right to freedom of movement, the facts of the main proceedings relate to a matter covered by Community law, with the result that

Community law is applicable *ratione materiae* to that case. Under this view, Mrs Tas-Hagen and Mr Tas cannot plead any infringement of Article 18(1) EC in this case because benefits for civilian war victims do not come within the scope of Community law.

21 In that regard, it is important to bear in mind that, as Community law now stands, a benefit such as that in issue in the main proceedings, which is intended to compensate civilian war victims for physical or mental damage which they have suffered, falls within the competence of the Member States.

22 However, Member States must exercise that competence in accordance with Community law, in particular with the Treaty provisions giving every citizen of the Union the right to move and reside freely within the territory of the Member States.

23 Furthermore, it is accepted that citizenship of the Union, established by Article 17 EC, is not intended to extend the material scope of the Treaty to internal situations which have no link with Community law (Joined Cases C-64/96 and C-65/96 *Uecker and Jacquet* [1997] ECR I-3171, paragraph 23, and Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraph 26).

24 In this case, it must be held that a situation such as that of the applicants in the main proceedings is covered by the right of free movement and residence of citizens of the European Union.

25 In that regard, it must be borne in mind that Mrs Tas-Hagen and Mr Tas, in taking up residence in Spain, were exercising the right granted by Article 18(1) EC to every citizen of the Union to move and reside freely within the territory of a Member State other than that of which he is a national.

26 Furthermore, it is clear from the documents sent to the Court by the Centrale Raad van Beroep that the rejection of the applications for benefits submitted by Mrs Tas-Hagen and Mr Tas was attributable to the fact that, at the time at which they submitted those applications, they had taken up residence in Spain.

27 Since, in order to obtain a benefit granted to civilian war victims such as that in issue in the main proceedings, the WUBO requires that applicants, at the time of their applications, be resident in the Netherlands, the unavoidable conclusion is that the exercise by the applicants of their right to move and reside freely within the territory of a Member State other than that of which they are nationals was such as to affect their prospects of receiving that benefit.

28 It follows that, as the exercise by Mrs Tas-Hagen and Mr Tas of a right recognised by the Community legal order has had an impact on their right to receive a benefit under national legislation, such a situation cannot be considered to be a purely internal matter with no link to Community law.

29 It is therefore necessary to examine whether Article 18(1) EC, which is applicable to a situation such as that in the main proceedings, is to be interpreted as precluding national legislation requiring that applicants for a benefit granted to civilian war victims be resident in the Netherlands at the time when their application is submitted.

The need for a condition of residence

30 With regard to the scope of Article 18(1) EC, the Court has already held that the opportunities offered by the Treaty in relation to freedom of movement cannot be

fully effective if a national of a Member State can be deterred from availing himself of them by obstacles raised to his residence in the host Member State by legislation of his State of origin penalising the fact that he has used them (Case C-224/02 *Pusa* [2004] ECR I-5763, paragraph 19).

31 National legislation which places at a disadvantage certain of the nationals of the Member State concerned simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred by Article 18(1) EC on every citizen of the Union (Case C-406/04 *De Cuyper* [2006] ECR I-6947, paragraph 39).

32 The WUBO constitutes just such a restriction. In making payment of the benefit to civilian war victims conditional on the fact that applicants are resident in the territory of the Netherlands at the time when their application is submitted, this Law is liable to dissuade Netherlands nationals in a situation such as that of the applicants in the main proceedings from exercising their freedom to move and to reside outside the Netherlands.

33 Such a restriction can be justified, with regard to Community law, only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and is proportionate to the legitimate objective of the national provisions (*De Cuyper*, paragraph 40).

34 As to the first condition, which concerns the existence of objective considerations of public interest, it is apparent from the order for reference that the limitation by the WUBO, by means of the condition of residence, of the number of persons likely to be eligible for the benefits introduced by that Law results from the Netherlands legislature's wish to limit the obligation of solidarity with civilian war victims to those who had links with the population of the Netherlands during and after the war. The condition of residence is therefore an expression of the extent to which such victims are connected to Netherlands society.

35 Admittedly, this aim of solidarity may constitute an objective consideration of public interest. It is still necessary for the condition of proportionality outlined in paragraph 33 above to be met. It follows from the case-law that a measure is proportionate when, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to attain it (*De Cuyper*, paragraph 42).

36 With regard to benefits that are not covered by Community law, Member States enjoy a wide margin of appreciation in deciding which criteria are to be used when assessing the degree of connection to society, while at the same time complying with the limits imposed by Community law.

37 However, a condition of residence such as that in issue in the main proceedings cannot be characterised as an appropriate means by which to attain the objective sought.

38 As the Advocate General has noted in points 67 and 68 of her Opinion, a criterion requiring residence cannot be considered a satisfactory indicator of the degree of connection of applicants to the Member State granting the benefit when it is liable, as is the case with the criterion in issue in the main proceedings, to lead to different results for persons resident abroad whose degree of integration into the society of the Member State granting the benefit is in all respects comparable.

39 Consequently, the setting of a residence criterion such as that used in the main proceedings, based solely on the date on which the application for the benefit is submitted, is not a satisfactory indicator of the degree of attachment of the applicant to the society which is thereby demonstrating its solidarity with him. It follows that this condition of residence fails to comply with the principle of proportionality referred to in paragraphs 33 and 35 above.

40 In the light of the foregoing considerations, the answer to the question must be that Article 18(1) EC is to be interpreted as precluding legislation of a Member State under which it refuses to grant to one of its nationals a benefit for civilian war victims solely on the ground that, at the time at which the application was submitted, the person concerned was resident, not in the territory of that Member State, but in the territory of another Member State.

Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 18(1) EC must be interpreted as precluding legislation of a Member State under which it refuses to grant to one of its nationals a benefit for civilian war victims solely on the ground that, at the time at which the application was submitted, the person concerned was resident, not in the territory of that Member State, but in the territory of another Member State.

[Signatures]