JUDGMENT OF THE COURT (Third Chamber)
24 September 1987 *

In Case 43/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) for a preliminary ruling in the action pending before that court between

Bestuur van de Sociale Verzekeringsbank (Board of Management of the Social Insurance Bank)

and

J. A. de Rijke and L. A. C. de Rijke-Van Gent

on the interpretation of Annex VI, Part J (until 1 January 1986, Part I), Point 2 (c) of 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 (Official Journal 1983, L 230, p. 8),

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

the Bestuur van de Sociale Verzekeringsbank, the appellant in the main proceedings, by B. H. ter Kuile, of The Hague Bar,

the Netherlands Government, by E. F. Jacobs, acting as Agent,

* Language of the Case: Dutch.

the Commission of the European Communities, by J. Griesmar, a member of its Legal Department, assisted by F. Herbert, of the Brussels Bar,

having regard to the Report for the Hearing and further to the hearing on 19 March 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 7 May 1987,

gives the following

Judgment

1 By a judgment of 12 February 1986, which was received at the Court on 17 February 1986, the Hoge Raad der Nederlanden referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation 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 of 22.8.1983, p. 8), and in particular Annex VI, Part I, Point 2 thereof.

2 The question was raised in proceedings between Mr and Mrs de Rijke and the Bestuur van de Sociale Verzekeringsbank (hereinafter referred to as 'the Board'), Amsterdam. The dispute concerns the question whether Mrs de Rijke is entitled to remain voluntarily insured under the Algemene Ouderdomswet (Law on general old-age insurance, hereinafter referred to as 'the old-age law') for the period from 14 July 1981, the date of her husband's 65th birthday, to 6 July 1984.

3 It appears from the judgment referring the question that Mr de Rijke was born on 14 July 1916 and Mrs de Rijke, his wife, on 6 July 1919. Since 18 February 1978 Mr de Rijke had been in receipt of an invalidity pension. On 2 July 1978 Mr and Mrs de Rijke left the Netherlands and moved to France. On 15 October 1982 they moved to Monaco.

4 When he reached the age of 65 Mr de Rijke was granted a full married man's old-age pension by a decision of 28 July 1981 under the old-age law.

5 By a letter of 2 September 1981, the Board informed Mr de Rijke that his wife was no longer entitled to voluntary insurance under the old-age law. That decision was adopted in response to a letter sent to the Board on 25 May 1981 by Mr de Rijke's former employer, to whom Mr de Rijke had notified his wish to continue paying voluntary contributions for his wife. The ground of the Board's refusal was that the application had not been made within one year after the end of the compulsory insurance.

6 Mr and Mrs de Rijke appealed against both decisions to the Raad van Beroep (Social Security Court), Amsterdam, which annulled them by judgment of 6 June 1983. On appeal, the Centrale Raad van Beroep (Court of Last Instance in social security matters) set aside that judgment as far as the decision to grant the pension was concerned and upheld the rest of the judgment. The Board thereupon lodged an appeal in cassation at the Hoge Raad, which concluded that an interpretation of a provision of Community law was needed and stayed the proceedings until the Court of Justice had given a preliminary ruling on the following question:

'Where, in the case of a married woman whose husband is entitled to a pension under the Netherlands Algemene Ouderdomswet, a period must be taken into account as an insurance period by virtue of Annex VI, Part I, Point 2 (c) (originally Annex V, Part F, Point 2 (c)) of Council Regulation (EEC) No 1408/71 of 14 June 1971, but it does not qualify as an insurance period under Netherlands law (that is to say under the provisions laid down by or pursuant to Article 6 of the Algemene Ouderdomswet),

(a) Does the aforesaid provision of Community law, or any other provision thereof, confer upon that woman a right, enforceable against the competent Netherlands institutions, to be regarded and treated as an insured person for the purposes of the Algemene Ouderdomswet, in derogation from the provisions laid down by or pursuant to Article 6 thereof, or

(b) Does the principle which emerges from the judgment of the Court of Justice of 12 July 1979 in Case 266/78 *Brunori* v *Landesversicherungsanstalt Rhein-*

provinz [1979] ECR 2705 and the judgment of 24 April 1980 in Case 110/79 *Coonan* v *Insurance Officer* [1980] ECR 1445 apply, namely that it is for each Member State to lay down the conditions for affiliation and cessation of affiliation to social security schemes?'

7 Reference is made to the Report for the Hearing for a fuller account of the Netherlands legislation, the relevant provisions of Community law and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 According to Article 1 (2) of the Royal Decree of 22 December 1971 on the payment of voluntary contributions under the old-age law and the Algemene Weduwen-en Wezenwet (Law on general insurance for widows and orphans), persons who wish to remain insured on a voluntary basis, after being insured under the old-age law, must submit an application to that effect within one year at the latest after the end of the insurance. Since in the case of Mrs de Rijke the application was not submitted until 1981, the question whether it was out of time depends on the time when her insurance under the old-age law came to an end.

9 According to Netherlands law, Mrs de Rijke ceased to be insured under the old-age law from 2 July 1978, the date on which she and her husband left the Netherlands in order to settle in France. However, Annex VI, Part I, Point 2 (c), of Regulation No 1408/71 provides as follows:

'(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).'

10 The question, therefore, is whether that provision is applicable in this case and, if so, whether the periods taken into account thereunder as insurance periods are insurance periods under the old-age law for the purposes of Article 1 (2) of the Royal Decree of 22 December 1971.

11 According to the Commission, the Board and the Netherlands Government, the periods taken into account pursuant to the aforementioned provision of Regulation No 1408/71 are not true periods of insurance but constitute a factor in the calculation of the pension. The application to make voluntary contributions should therefore have been made no later than one year after 2 July 1978.

12 It should be pointed out first of all that, as the Court held in its judgment of 24 April 1980 in Case 110/79 *Coonan* v *Insurance Officer* [1980] ECR 1445, it is for the legislature of each Member State to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme, provided always that in this connection there is no discrimination between nationals of the host State and nationals of the other Member States. The Court had already recognized those powers of the national legislatures in its judgment of 12 July 1979 in Case 266/78 *Brunori* v *Landesversicherungsanstalt Rheinprovinz* [1979] ECR 2705, in which the Court held that the conditions of affiliation included the conditions governing the cessation of affiliation.

13 As the Court held in its judgments of 25 February 1986 in Case 254/84 *De Jong* v *Bestuur van de Sociale Verzekeringsbank* [1986] ECR 671, at p. 676 and Case 284/84 *Spruyt* v *Bestuur van de Sociale Verzekeringsbank* [1986] ECR 685, at p. 693, the provisions of Regulation (EEC) No 1408/71, adopted to implement Article 51 of the EEC Treaty, must be interpreted in the light of the objective of that article, 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.

14 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.

15 In the light of those considerations the Court, in the judgments quoted above, interpreted the purpose of Point 2 (c) as being 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 taken into account 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 Point 2 (a).

16 In the present case, that provision was applied by the Board which, in calculating the old-age pension, took account of the period between 2 July 1978 (the date on which Mr and Mrs de Rijke left the Netherlands) and 14 July 1981 (the date on which Mr de Rijke reached the age of 65).

17 However, the principle of freedom of movement is not undermined if the legislation of a Member State simply lays down a time-limit for the submission of an application to remain insured on a voluntary basis by virtue of which certain periods completed outside the territory of that State can be taken into account in the calculation of an old-age pension. When she left the Netherlands, Mrs de Rijke could have avoided a reduction in her pension in the event of her husband's death by submitting during the year following her departure an application to remain insured on a voluntary basis.

18 It follows that the application of the principle established by the case-law of the Court, according to which the laying down of conditions for affiliation to a social security scheme is a matter for the legislature of each Member State, is not ruled out in such a case by Point 2 (c) of Annex VI to Regulation No 1408/71.

19 The answer to the question referred to the Court by the Hoge Raad der Nederlanden must therefore be that neither Article 51 of the EEC Treaty nor any provision of Regulation No 1408/71 requires the periods referred to in Point 2 (c) of Part I of Annex VI to that regulation to be regarded as insurance periods for the purpose of determining the period within which an application to pay voluntary contributions under national legislation may be submitted.

Costs

20 The costs incurred by the Netherlands Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since 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 (Third Chamber),

in answer to the question referred to it by the Hoge Raad der Nederlanden, by judgment of 12 February 1986, hereby rules:

Neither Article 51 of the EEC Treaty nor any provision of Regulation (EEC) No 1408/71 requires the periods referred to in Point 2 (c) of Part I of Annex VI to that regulation to be regarded as insurance periods for the purpose of determining the period within which an application to pay voluntary contributions under national legislation may be submitted.

Galmot Everling Moitinho de Almeida

Delivered in open court in Luxembourg on 24 September 1987.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber