JUDGMENT OF THE COURT (Fifth Chamber)
27 November 1997 *

In Case C-57/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Nederlandse Raad van State (Netherlands) for a preliminary ruling in the proceedings pending before that court between

H. Meints

and

Minister van Landbouw, Natuurbeheer en Visserij

on the interpretation of Article 4 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 and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), and of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475),

* Language of the case: Dutch.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida, D. A. O. Edward (Rapporteur) and L. Sevón, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, and

— the Commission of the European Communities, by H. van Vliet and M. Patakia, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Netherlands Government, represented by M. Fierstra, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; the French Government, represented by C. Chavance, Foreign Affairs Secretary in the Legal Directorate of the Ministry of Foreign Affairs, acting as Agent; and the Commission, represented by H. van Vliet, at the hearing on 29 May 1997,

after hearing the Opinion of the Advocate General at the sitting on 16 September 1997,

gives the following

Judgment

1 By interlocutory decision of 22 February 1996, received at the Court on 26 February 1996, the Nederlandse Raad van State (Netherlands Council of State) referred for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 4 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 and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), and of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).

2 Those questions were raised in the context of a dispute between Mr Meints and the Minister van Landbouw, Natuurbeheer en Visserij (Minister for Agriculture, Nature Conservancy and Fisheries) concerning the Minister's refusal to grant Mr Meints a benefit payable to agricultural workers made redundant following the setting aside of land belonging to their former employer.

The Community law

3 Regulation No 1408/71 applies, in accordance with Article 4(1)(g), to all legislation concerning branches of social security relating to, *inter alia*, unemployment benefits.

4 The first recital in the preamble to Regulation No 1612/68 states that 'freedom of movement for workers should be secured within the Community by the end of the transitional period at the latest; ... the attainment of this objective entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Community in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health'.

5 The third and fourth recitals state that 'the right of all workers in the Member States to pursue the activity of their choice within the Community should be affirmed' and that 'such right must be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services'.

6 Article 7 of Regulation No 1612/68 then provides:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal and, should he become unemployed, reinstatement or reemployment.

2. He shall enjoy the same social and tax advantages as national workers.'

The Netherlands legislation

7 In the Netherlands, the Stichting Ontwikkelings- en Saneringsfonds voor de Landbouw (Foundation for the Agricultural Development and Reform Fund, hereinafter 'the Fund') is a body having legal personality set up under private law for the purpose, under its Statutes, of promoting agricultural development and reform. To that end, it is given certain public responsibilities, including the implementation in national law of certain Community provisions. Its resources are funded from the budget of the Minister for Agriculture, Nature Conservancy and Fisheries.

8 In that context, the Fund adopted the Vergoedingsregeling voor Uittreding van Werknemers in de Landbouw (Compensation Rules for Workers Leaving Farming, *Staatscourant* No 114 of 16 June 1988, p. 23, hereinafter 'the Compensation Rules'), the purpose of which is to allocate a State subsidy granted to the agricultural sector to provide support for the reorganization made necessary by Community law.

9 Under the Compensation Rules, the Board of the Fund may, upon application and subject to compliance with certain conditions, grant a benefit to agricultural workers whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer.

10 That benefit takes the form of a single fixed payment, the amount of which is determined solely by the age of the recipient. If the worker is under 50 years old, the Compensation Rules further provide for assistance with retraining costs.

11 Article 4(e) of the Compensation Rules makes it a condition for payment that the worker must be entitled to benefit under the Werkloosheidswet (Unemployment

Law). Under Article 19(1)(f) of the Werkloosheidswet, a worker who lives, temporarily or permanently, outside the Netherlands other than for holidays has no entitlement to unemployment benefit.

12 Under Article 6 of the Compensation Rules, entitlement to the benefit lapses if the recipient is reemployed by his former employer within 12 months following the termination of his former contract of employment. The Commission has stated in that regard, without being contradicted, that in such cases the benefit must in principle be repaid.

13 Under Article 13 of the Compensation Rules, the total amount of the benefits paid out in any one year may not exceed HFL 1 000 000. The Netherlands Government has, however, informed the Court that the budgetary resources appropriated for the benefit in issue have never yet been exhausted in the course of any one year.

14 The Netherlands Government has further specified that, within that budgetary limit, any person meeting the conditions for payment set out in the Compensation Rules who applies for the benefit is entitled to receive it. The authorities have no discretion other than to derogate from the conditions for payment in special circumstances in order to award the benefit to certain persons not formally entitled.

The dispute in the main proceedings

15 Mr Meints, a German national, worked on a farm in the Netherlands while continuing to reside in Germany.

16 Following set-aside measures taken by his former employer, Mr Meints lost his job and subsequently received unemployment benefit in Germany. In addition, he applied to the Netherlands authorities to receive a benefit under the Compensation Rules.

17 That application was rejected by decision of 28 August 1991 on the ground that, not being resident in the Netherlands, Mr Meints was not entitled to any benefit under the Werkloosheidswet and thus did not meet the condition laid down in Article 4(e) of the Compensation Rules.

18 On 16 September 1991, Mr Meints lodged an objection against that decision with the Board of the Fund, which dismissed it by decision of 9 July 1992. He then lodged a further objection against that decision with the Minister for Agriculture, Nature Conservancy and Fisheries, which was likewise dismissed on 2 March 1994.

19 Mr Meints then brought proceedings contesting the last-mentioned decision before the Arrondissementsrechtbank (District Court), The Hague, which, by judgment of 15 February 1995, ruled that his action was unfounded.

20 Finally, on 6 March 1996, Mr Meints appealed against that judgment to the Nederlandse Raad van State. In his appeal, he submits, essentially, that the refusal to grant him the benefit in issue on the ground that he is resident in Germany is incompatible with either Regulation No 1408/71 or Regulation No 1612/68.

21 Uncertain as to the interpretation to be given to the provisions of those two regulations, the national court decided to stay proceedings and refer the following two questions to the Court for a preliminary ruling:

'1. Does Regulation No 1408/71 apply to a benefit such that provided for in the Vergoedingsregeling voor Uittreding van Werknemers in de Landbouw (Compensation Rules for Workers Leaving Farming) which does not depend on the duration of unemployment and forms part of a scheme of measures for the structural improvement of the agricultural sector which emphasizes the promotion of the complete or partial cessation of farming and the abandonment of farming by farmers?

What other circumstances may also be relevant?

2. If Question 1 is answered in the negative, is a benefit granted under the Vergoedingsregeling to be regarded as a social advantage within the meaning of Article 7(2) of Regulation No 1612/68? If so, is the imposition of the requirement that the worker concerned should have his residence in the Netherlands to be regarded as different treatment by reason of nationality contrary to Article 7 of that regulation?'

The first question

22 By this question, the national court seeks to know, in substance, whether Regulation No 1408/71 applies to a compensation scheme, such as that in issue in the main proceedings, under which agricultural workers, whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer, receive a benefit in the form of a single payment, the amount of which is determined solely by the age of the recipient and which must be repaid if the recipient is reemployed by his former employer within 12 months following the termination of his contract of employment.

23 The Court has held that the distinction between benefits excluded from the scope of Regulation No 1408/71 and those which fall within its scope is based essentially on the constituent elements of each benefit, in particular its purposes and the conditions on which it is granted, and not on whether it is classified as a social security benefit by national legislation (see, in particular, Case C-111/91 *Commission* v *Luxembourg* [1993] ECR I-817, paragraph 28, and Case 249/83 *Hoeckx* v *Openbaar Centrum voor Maatschappelijk Welzijn Kalmthout* [1985] ECR 973, paragraph 11).

24 A benefit may be regarded as a social security benefit in so far as it is granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and provided that it relates to one of the risks expressly listed in Article 4(1) of Regulation No 1408/71 (Case C-66/92 *Acciardi* v *Commissie Beroepszaken Administratieve Geschillen in de Provincie Noord-Holland* [1993] ECR I-4567, paragraph 14).

25 A benefit such as that in issue in the main proceedings cannot be regarded as relating to one of the risks expressly listed in Article 4(1) of Regulation No 1408/71.

26 Of the branches of social security listed in that article, only that relating to unemployment benefits could be relevant here.

27 In order to be classified as an 'unemployment benefit' within the meaning of Article 4(1)(g) of Regulation No 1408/71, a benefit must be intended to replace the remuneration lost by reason of unemployment and thereby provide for the maintenance of the unemployed person (see, to that effect, Case C-102/91 *Knoch* v *Bundesanstalt für Arbeit* [1992] ECR I-4341, paragraph 44).

28 That is not the case with regard to a benefit such as that in issue in the main proceedings, which is defined by the following characteristics.

29 Firstly, the recipient of the benefit in issue must repay it if he is reemployed by his former employer within 12 months following the termination of his contract of employment.

30 Secondly, neither entitlement to the benefit nor the amount thereof is related to the length of the period of unemployment, since entitlement arises simply where the former contract of employment has been terminated and the recipient is unemployed when he receives the benefit.

31 Thirdly, the benefit in issue is not a recurrent payment but is paid as a single fixed sum varying only in relation to the age of the applicant.

32 Fourthly, that benefit is paid in addition to the unemployment benefits provided for under the national social security scheme, the right to which is merely one of the conditions for payment.

33 It is clear, moreover, from the documents before the Court, that the main purpose of the benefit in issue is to provide support with regard to the social consequences of the structural reorganization made necessary by the Community legislation, in this case the setting aside of arable land. It is thus intended as a redundancy payment made from public funds in the context of support measures relating to cessation of economic activities.

34 The benefit in issue cannot, therefore, be classified as an 'unemployment benefit' within the meaning of Article 4(1)(g) of Regulation No 1408/71.

35 The answer to the first question must therefore be that Regulation No 1408/71 does not apply to a compensation scheme, such as that in issue in the main proceedings, under which agricultural workers, whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer, receive a benefit in the form of a single payment, the amount of which is determined solely by the age of the recipient and which must be repaid if the recipient is reemployed by his former employer within 12 months following the termination of his contract of employment.

The second question

36 This question comprises two distinct parts. The first concerns the definition of a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 and the second concerns such discrimination as may arise out of the residence condition laid down in the Compensation Rules.

The definition of a social advantage

37 By the first part of its second question, the national court seeks to know, in substance, whether a benefit which, like that in issue in the main proceedings, takes the form of a single payment to agricultural workers whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer may be classified as a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

38 The Netherlands Government and the Commission rightly consider that a benefit such as that in issue in the main proceedings does constitute a 'social advantage' within the meaning of Article 7(2) of Regulation No 1612/68.

39 The reference to 'social advantages' in Article 7(2) cannot be interpreted restrictively (Case 32/75 *Cristini* v *SNCF* [1975] ECR 1085, paragraph 12). It has consistently been held that 'social advantages' should be interpreted as meaning all advantages which, whether or not linked to a contract of employment, are generally granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community (Case C-310/91 *Schmid* v *Belgian State* [1993] ECR I-3011, paragraph 18).

40 Furthermore, as the Court held in Case 39/86 *Lair* v *Universität Hannover* [1988] ECR 3161, paragraph 36, migrant workers are guaranteed certain rights linked to the status of worker even when they are no longer in an employment relationship.

41 A benefit such as that in issue, the payment of which is dependent on the prior existence of an employment relationship which has recently come to an end, meets those conditions, since entitlement to the benefit is intrinsically linked to the recipients' objective status as workers.

42 The answer to the first part of the second question must therefore be that a benefit which, like that in issue in the main proceedings, takes the form of a single payment to agricultural workers whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer is to be classified as a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

The residence condition

43 By the second part of its second question, the national court seeks to know, in substance, whether a Member State may make payment of a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 dependent on the condition that recipients be resident within its territory.

44 The Court has consistently held that the equal treatment rule laid down in Article 48 of the EC Treaty and in Article 7 of Regulation No 1612/68 prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result (see, *inter alia,* Case C-237/94 *O'Flynn* v *Adjudication Officer* [1996] ECR I-2617, paragraph 17).

45 Unless it is objectively justified and proportionate to its aim, a provision of national law must be regarded as indirectly discriminatory if it is intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage (*O'Flynn*, cited above, paragraph 20).

46 This is true of a residence condition such as that in issue in the main proceedings, which can be more easily met by national workers than by those from other Member States.

47 The Netherlands Government stresses that the Compensation Rules do not explicitly lay down the residence condition but refer to the Werkloosheidswet, which contains that condition. The purpose of the condition that the recipient be entitled to unemployment benefit under that Law is not to limit entitlement to the benefit

in issue only to those resident in the Netherlands but to incorporate into the Compensation Rules another condition, contained in the Werkloosheidswet, to the effect that no applicant laid off as a result of his own action may receive the benefit concerned.

48 That justification cannot be accepted. It is neither necessary nor appropriate, in order to achieve the aim of excluding persons laid off as a result of their own action from entitlement to the benefit, to include a residence condition in the Compensation Rules. The applicant's place of residence is irrelevant to determining whether he was laid off as a result of his own action.

49 The French and Netherlands Governments further observe that a frontier worker cannot in any event rely on Article 7 of Regulation No 1612/68 in order to claim social advantages. That regulation, they argue, does not provide for the possibility of 'exporting' such advantages.

50 That argument disregards the wording of Regulation No 1612/68, the fourth recital of whose preamble expressly states that the right of free movement must be enjoyed 'without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services' and Article 7 of which refers, without reservation, to a 'worker who is a national of a Member State'.

51 In the light of the foregoing, the answer to the second part of the second question must be that a Member State may not make payment of a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 dependent on the condition that recipients be resident within its territory.

Costs

52 The costs incurred by the Netherlands Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Nederlandse Raad van State by interlocutory decision of 22 February 1996, hereby rules:

1. **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 and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, does not apply to a compensation scheme under which agricultural workers, whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer, receive a benefit in the form of a single payment, the amount of which is determined solely by the age of the recipient and which must be repaid if the recipient is reemployed by his former employer within 12 months following the termination of his contract of employment.**

2. **A benefit which takes the form of a single payment to agricultural workers whose contract of employment has been terminated as a result of the setting aside of land belonging to their former employer is to be classified as a social advantage within the meaning of Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.**

3. **A Member State may not make payment of a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 dependent on the condition that recipients be resident within its territory.**

Gulmann Wathelet Moitinho de Almeida

Edward Sevón

Delivered in open court in Luxembourg on 27 November 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber