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Judgment of the Court of 5 December 1967. - Bestuur der Sociale Verzekeringsbank v J. H. van der Vecht. - Reference for a preliminary ruling: Centrale Raad van Beroep - Netherlands. - Case 19-67.

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Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

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1 . COMMUNITY LAW - UNIFORM INTERPRETATION - VERSIONS EXISTING IN THE FOUR COMMUNITY LANGUAGES TO BE TAKEN INTO CONSIDERATION

2 . FREE MOVEMENT OF PERSONS - WORKERS - SOCIAL SECURITY - LEGISLATION APPLICABLE - EMPLOYMENT AND RESIDENCE OF BENEFICIARIES IN THE TERRITORY OF DIFFERENT MEMBER STATES - CONVEYANCE BETWEEN THE COUNTRY OF RESIDENCE AND COUNTRY OF EMPLOYMENT - SOCIAL SECURITY SUBJECT TO THE LEGISLATION IN FORCE IN COUNTRY OF EMPLOYMENT

(REGULATION NO 3, ARTICLE 12)

3 . FREE MOVEMENT OF PERSONS - WORKERS - SOCIAL SECURITY - LEGISLATION OF MEMBER STATES OTHER THAN THAT IN WHICH THE WORKERS ARE EMPLOYED - LEGISLATION INVOLVING AN INCREASE IN CHARGES BORNE BY WORKERS WITHOUT ANY CORRESPONDING ADVANTAGE - INAPPLICABILITY

(REGULATION NO 3, ARTICLE 12)

4 . FREE MOVEMENT OF PERSONS - WORKERS - SOCIAL SECURITY - ADMINISTRATIVE COMMISSION WITHIN THE MEANING OF ARTICLE 43 OF REGULATION NO 3 - COURTS AND TRIBUNALS NOT BOUND BY ITS DECISIONS TAKEN IN PURSUANCE OF ARTICLE 43 (A) OF REGULATION NO 3

5 . FREE MOVEMENT OF PERSONS - WORKERS - SOCIAL SECURITY - LEGISLATION APPLICABLE - BENEFICIARIES UNDER ARTICLE 13(A) OF REGULATION NO 3 (IN THE WORDING EXISTING PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64)

6 . FREE MOVEMENT OF PERSONS - WORKERS - SOCIAL SECURITY - LEGISLATION APPLICABLE - RESIDENCE OF BENEFICIARIES AND REGISTERED OFFICE OF UNDERTAKING BY WHICH THEY ARE EMPLOYED IN THE TERRITORY OF A MEMBER STATE OTHER THAN THAT IN WHICH THE WORK IS CARRIED OUT - PROBABLE DURATION OF THIS EMPLOYMENT WITHIN THE MEANING OF ARTICLE 13(A) OF REGULATION NO 3 (IN THE WORDING EXISTING PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64)

Summary

1 . THE NEED FOR A UNIFORM INTERPRETATION OF COMMUNITY REGULATIONS PREVENTS THE TEXT OF A PROVISION FROM BEING CONSIDERED IN ISOLATION, BUT IN CASES OF DOUBT REQUIRES IT TO BE INTERPRETED AND APPLIED IN THE LIGHT OF THE VERSIONS EXISTING IN THE OTHER THREE LANGUAGES .

2 . A WORKER WHO IS EMPLOYED IN THE TERRITORY OF ONE MEMBER STATE BUT WHO RESIDES IN THE TERRITORY OF ANOTHER MEMBER STATE AND WHO IS CONVEYED AT HIS EMPLOYER'S EXPENSE BETWEEN HIS PLACE OF RESIDENCE AND HIS PLACE OF EMPLOYMENT REMAINS SUBJECT TO THE LEGISLATION OF THE FORMER STATE BY VIRTUE OF ARTICLE 12 OF REGULATION NO 3, EVEN AS REGARDS THAT PART OF THE JOURNEY WHICH TAKES PLACE IN THE TERRITORY OF THE STATE IN WHICH HE RESIDES AND IN WHICH THE UNDERTAKING IS ESTABLISHED .

3 . ARTICLE 12 OF REGULATION NO 3 PROHIBITS A MEMBER STATE OTHER THAN THAT IN WHOSE TERRITORY A WORKER IS EMPLOYED FROM APPLYING ITS SOCIAL SECURITY LEGISLATION TO SUCH WORKER WHERE TO DO SO WOULD LEAD TO AN INCREASE IN THE CHARGES BORNE BY WAGE-EARNERS OR THEIR EMPLOYERS, WITHOUT ANY CORRESPONDING SUPPLEMENTARY PROTECTION BY WAY OF SOCIAL SECURITY .

4 . DECISIONS TAKEN BY THE ADMINISTRATIVE COMMISSION IN PURSUANCE OF ARTICLE 43(A) OF REGULATION NO 3 ARE NOT BINDING ON NATIONAL COURTS OR TRIBUNALS .

5 . ARTICLE 13(A) OF REGULATION NO 3, AS WORDED PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64, APPLIES TO A WORKER WHO IS ENGAGED SOLELY FOR EMPLOYMENT IN THE TERRITORY OF A MEMBER STATE OTHER THAN THAT IN WHICH THE ESTABLISHMENT TO WHICH HE IS NORMALLY ATTACHED IS SITUATED, IN SO FAR

AS THE PROBABLE DURATION OF HIS EMPLOYMENT IN THE TERRITORY OF THE FORMER STATE DOES NOT EXCEED TWELVE MONTHS .

6 . THE EXPRESSION ' THE PROBABLE DURATION OF THEIR EMPLOYMENT ' USED IN ARTICLE 13(A) , AS WORDED PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64 , REFERS TO THE DURATION OF THE EMPLOYMENT OF EACH INDIVIDUAL WORKER .

Parties

IN CASE 19/67

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE CENTRALE RAAD VAN BEROEP FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

BESTUUR DER SOCIALE VERZEKERINGSBANK

AND

J.H . VAN DER VECHT , RESIDING AT VLAARDINGEN ,

Subject of the case

ON THE INTERPRETATION OF ARTICLES 12 AND 13 OF REGULATION NO 3 OF THE COUNCIL OF THE EEC CONCERNING SOCIAL SECURITY FOR MIGRANT WORKERS (OFFICIAL JOURNAL OF 16 DECEMBER 1958 , P.561 ET SEQ .).

Grounds

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BY LETTER OF 18 MAY 1967 , RECEIVED AT THE COURT REGISTRY ON 22 MAY 1967 , THE CENTRALE RAAD VAN BEROEP REQUESTED THE COURT IN DUE FORM TO GIVE A PRELIMINARY RULING IN ACCORDANCE WITH ARTICLE 177 OF THE EEC TREATY ON THE INTERPRETATION OF ARTICLES 12 AND 13 OF REGULATION NO 3 .

THE FIRST QUESTION CONCERNS THE INTERPRETATION OF ARTICLE 12 ON THE POINT WHETHER A WORKER WHO IS EMPLOYED IN THE TERRITORY OF A MEMBER STATE OTHER THAN THAT IN WHICH HE RESIDES AND IN WHICH THE UNDERTAKING WHICH EMPLOYS HIM IS ESTABLISHED , BUT WHO , IN ORDER TO CARRY OUT HIS WORK , IS CONVEYED DAILY BY AND AT THE EXPENSE OF HIS EMPLOYER BETWEEN HIS PLACE OF RESIDENCE AND HIS PLACE OF WORK , IS EMPLOYED IN THE TERRITORY OF THE LATTER STATE WITHIN THE MEANING OF ARTICLE 12 OF REGULATION NO 3 , EVEN DURING THE JOURNEY TO THE FORMER STATE AND , IN PARTICULAR , DURING THAT PART OF THE JOURNEY WHICH TAKES PLACE IN THE TERRITORY OF THE LATTER MEMBER STATE . THIS QUESTION MUST BE EXAMINED IN CONJUNCTION WITH THE PENULTIMATE QUESTION PUT BY THE COURT REFERRING THE MATTER , WHICH CONCERNS THE INTERPRETATION OF ARTICLE 13(A) .

BY VIRTUE OF ARTICLE 12 OF REGULATION NO 3 , A WORKER IS SUBJECT TO THE SOCIAL SECURITY LEGISLATION OF THE STATE IN WHOSE TERRITORY HE IS

EMPLOYED, SAVE AS OTHERWISE PROVIDED FOR IN THAT REGULATION AND IN PARTICULAR IN ARTICLE 13 . THE CONVEYANCE OF THE WORKER BETWEEN HIS PLACE OF RESIDENCE AND HIS PLACE OF EMPLOYMENT IN ANOTHER MEMBER STATE IS MERELY A CONSEQUENCE OF HIS EMPLOYMENT . A DISTINCTION BETWEEN, FIRST, A WORKER'S EMPLOYMENT IN THE TERRITORY OF A MEMBER STATE, CONSISTING BOTH OF HIS ACTUAL WORK AND CONVEYANCE TO THAT WORK ON THE RESPONSIBILITY OF THE UNDERTAKING IN THAT TERRITORY AND, SECONDLY, HIS EMPLOYMENT IN THE TERRITORY OF A DIFFERENT MEMBER STATE, CONSISTING OF THE REMAINDER OF THE JOURNEY CARRIED OUT THE RESPONSIBILITY OF THE SAME UNDERTAKING, IS CONTRARY TO THE SPIRIT OF REGULATION NO 3, AND IN PARTICULAR ARTICLE 12 THEREOF . IN FACT, IN THE INTERESTS OF BOTH WORKERS AND EMPLOYERS AS MUCH AS OF INSURANCE FUNDS, THE AIM OF THE REGULATION IS TO AVOID ANY PLURALITY OR PURPOSELESS CONFUSION OF CONTRIBUTIONS AND LIABILITIES WHICH WOULD RESULT FROM THE SIMULTANEOUS OR ALTERNATE APPLICATION OF SEVERAL LEGISLATIVE SYSTEMS .

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THIS INTERPRETATION OF ARTICLE 12 IS CONFIRMED BY THE EXCEPTIONS PROVIDED FOR IN ARTICLE 13 WHICH LAYS DOWN PRECISE RULES EVEN IN RESPECT OF CASES IN WHICH A WORKER IS UNQUESTIONABLY EMPLOYED IN THE TERRITORY OF SEVERAL MEMBER STATES SO AS TO AVOID ANY SIMULTANEOUS APPLICATION OF SEVERAL LEGISLATIVE SYSTEMS .

IN ITS WORDING EXISTING PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64, WHICH THE COURT REFERRING THE MATTER REGARDS AS OF EXCLUSIVE IMPORTANCE TO THE CASE BEFORE IT, ARTICLE 13(A) LAYS DOWN AN EXCEPTION TO THE ABOVE RULE FOR WORKERS WHO ARE PERMANENTLY RESIDENT IN THE TERRITORY OF ONE MEMBER STATE AND WHO ARE EMPLOYED IN THE TERRITORY OF ANOTHER MEMBER STATE BY AN UNDERTAKING HAVING AN ESTABLISHMENT TO WHICH THEY ARE NORMALLY ATTACHED IN THE TERRITORY OF THE FIRST STATE, AND SUBJECTS THEM TO THE LEGISLATION OF THAT STATE IN SO FAR AS THE PROBABLE DURATION OF THEIR EMPLOYMENT IN THE TERRITORY OF THE SECOND STATE DOES NOT EXCEED TWELVE MONTHS . AMONG THE CRITERIA LAID DOWN IN THE FORMER VERSION OF ARTICLE 13(A) THE PHRASE IN THE DUTCH VERSION ' EEN BEDRIJF...WAARBIJ ZIJ GEWOONLIJK WERKZAAM ZIJN ' (AN ESTABLISHMENT ... BY WHICH THEY ARE NORMALLY EMPLOYED) HAS BEEN MADE THE SUBJECT OF THE PENULTIMATE QUESTION IN THE REQUEST FOR A PRELIMINARY RULING . THE COURT REFERRING THE MATTER RAISES THE QUESTION WHETHER THE CRITERION THUS FORMULATED IN THE DUTCH VERSION MAY BE APPLIED TO A WORKER WHO HAS BEEN ENGAGED EXCLUSIVELY TO WORK IN THE TERRITORY OF A MEMBER STATE OTHER THAN THAT IN WHICH THE UNDERTAKING WHICH HAS EMPLOYED HIM IS ESTABLISHED . IF THIS PHRASE IS CONSIDERED ONLY AS IT APPEARS IN THE DUTCH VERSION, IT MIGHT SUGGEST THAT A WORKER WHO IS ENGAGED SOLELY IN ORDER TO WORK IN THE TERRITORY OF A MEMBER STATE IN WHICH HE DOES NOT PERMANENTLY RESIDE AND IN WHICH THE UNDERTAKING WHICH EMPLOYS HIM IS NOT ESTABLISHED IS NOT COVERED BY ARTICLE 13(A), WITH THE RESULT THAT THE GENERAL RULE LAID DOWN IN ARTICLE 12 IS APPLICABLE TO HIM . HOWEVER, THE NEED FOR A UNIFORM INTERPRETATION OF COMMUNITY REGULATIONS NECESSITATES THAT THIS PASSAGE SHOULD NOT BE CONSIDERED IN ISOLATION, BUT THAT IN CASES OF DOUBT, IT SHOULD BE INTERPRETED AND APPLIED IN THE LIGHT OF THE VERSIONS EXISTING IN THE OTHER THREE LANGUAGES .

THE FRENCH VERSION READS : ' UN ETABLISSEMENT DONT IL (LE TRAVAILLEUR) RELEVE NORMALEMENT ' (AN ESTABLISHMENT TO WHICH HE (THE WORKER) IS NORMALLY ATTACHED), WHILST THE ITALIAN AND GERMAN VERSIONS CONTAIN COMPARABLE IF NOT IDENTICAL TERMS .

FURTHERMORE, REGULATION NO 24/64 OF THE COUNCIL MODIFIED THE DUTCH VERSION OF ARTICLE 13 TO BRING IT CLOSER TO THE VERSIONS EXISTING IN THE THREE OTHER LANGUAGES (' BEDRIJF...WAARAAN HIJ GEWOONLIJK VERBONDEN IS ').

IT FOLLOWS FROM THESE VERSIONS TAKEN TOGETHER THAT FOR THE APPLICATION OF ARTICLE 13(A) IT IS OF LITTLE IMPORTANCE WHETHER OR NOT THE WORKER WAS PREVIOUSLY EMPLOYED IN THE ESTABLISHMENT IN THE STATE IN WHICH HE RESIDES OR WHETHER THE WORK IN QUESTION IS DIFFERENT FROM THAT NORMALLY CARRIED OUT IN THIS ESTABLISHMENT . ON THE OTHER HAND, IN ORDER TO DETERMINE THE ESTABLISHMENT TO WHICH THE WORKER IS ' NORMALLY ATTACHED ' IT IS NECESSARY TO DEDUCE FROM ALL THE CIRCUMSTANCES OF HIS EMPLOYMENT WHETHER HE IS UNDER THE AUTHORITY OF THAT ESTABLISHMENT .

THE ANSWER MUST THEREFORE BE THAT ARTICLE 13(A) APPLIES EQUALLY TO A WORKER WHO HAS BEEN ENGAGED EXCLUSIVELY TO WORK IN THE TERRITORY OF A MEMBER STATE OTHER THAN THAT IN WHICH THE ESTABLISHMENT TO WHICH HE IS NORMALLY ATTACHED IS SITUATED, IN SO FAR AS THE PROBABLE DURATION OF HIS EMPLOYMENT IN THE TERRITORY OF THAT STATE DOES NOT EXCEED TWELVE MONTHS .

THE SECOND QUESTION CONCERNS THE INTERPRETATION OF ARTICLE 12 FOR THE PURPOSES OF ASCERTAINING WHETHER IT CONSTITUTES AN OBSTACLE TO THE SIMULTANEOUS APPLICATION OF THE LEGISLATION OF THE STATE IN WHICH THE WORKER RESIDES AND THAT OF THE STATE IN WHICH HE IS EMPLOYED .

THE PURPOSE OF ARTICLE 12 IS TO AVOID ANY SIMULTANEOUS APPLICATION OF NATIONAL LEGISLATIVE SYSTEMS WHICH MIGHT RESULT IN A PURPOSELESS INCREASE IN THE SOCIAL SECURITY CONTRIBUTIONS OF BOTH THE WORKER AND THE EMPLOYER . SUBJECT TO THE EXCEPTIONS PROVIDED FOR BY THE REGULATION, ARTICLE 12 PROHIBITS A MEMBER STATE OTHER THAN IN WHOSE TERRITORY A WORKER IS EMPLOYED FROM APPLYING ITS SOCIAL SECURITY LEGISLATION TO SUCH WORKER, WHERE TO DO SO WOULD LEAD TO AN INCREASE IN THE CHARGES BORNE BY WORKERS OR THEIR EMPLOYERS WITHOUT ANY CORRESPONDING SUPPLEMENTARY PROTECTION BY WAY OF SOCIAL SECURITY .

THE THIRD QUESTION CONCERNS THE INTERPRETATION OF ARTICLE 43 OF REGULATION NO 3 AND THE AUTHORITY TO BE GIVEN TO THE DECISIONS OF THE ADMINISTRATIVE COMMISSION REFERRED TO THEREIN .

THE AUTHORITY OF THE DECISIONS OF THIS COMMISSION IS DEFINED IN ARTICLE 43 ITSELF . THIS ARTICLE DIRECTS THE ADMINISTRATIVE COMMISSION TO SETTLE ALL ADMINISTRATIVE QUESTIONS AND QUESTIONS OF INTERPRETATION ARISING UNDER THAT REGULATION ' WITHOUT PREJUDICE TO THE RIGHT OF THE AUTHORITIES, INSTITUTIONS AND PERSONS CONCERNED TO HAVE RECOURSE TO THE PROCEDURES AND LEGAL REMEDIES PRESCRIBED UNDER THE LEGISLATION OF MEMBER STATES, IN

THIS REGULATION OR IN THE TREATY'. THIS PROVISION DOES NOT AFFECT THE POWERS OF THE COMPETENT COURTS OR TRIBUNALS TO ASSESS THE VALIDITY AND CONTENT OF THE PROVISIONS OF THE REGULATION, IN RESPECT OF WHICH THE DECISIONS OF THE SAID COMMISSION HAVE ONLY THE STATUS OF AN OPINION. NO OTHER INTERPRETATION OF ARTICLE 43 WOULD BE IN ACCORDANCE WITH THE TREATY, IN PARTICULAR ARTICLE 177 THEREOF, WHICH ESTABLISHES A PROCEDURE TO ENSURE THE UNIFORM JUDICIAL INTERPRETATION OF THE RULES OF COMMUNITY LAW

THE FINAL QUESTION CONCERNS THE INTERPRETATION OF ARTICLE 13(A) AS WORDED PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64, AND WHETHER THE WORD 'EMPLOYMENT' IN THE PHRASE 'THE PROBABLE DURATION OF THEIR EMPLOYMENT' REFERS TO THE DUTIES OF EACH WORKER INDIVIDUALLY OR TO THE WORK FOR WHICH HE IS EMPLOYED. IT FOLLOWS FROM THE ADJECTIVE 'THEIR' AND FROM THE FACT THAT THE MEANING OF THE NOUN 'EMPLOYMENT' (TEWERKSTELLING) IS THE SAME IN THE FOUR LANGUAGES THAT THIS PHRASE REFERS TO THE DURATION OF THE EMPLOYMENT OF THE WORKER AND NOT TO THE DURATION OF THE WORK TO WHICH HE IS ASSIGNED. CONSEQUENTLY, IN APPLYING ARTICLE 13(A), AS WORDED PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64, IT IS THE DURATION OF THE EMPLOYMENT OF THE INDIVIDUAL WORKER WHICH MUST BE TAKEN INTO CONSIDERATION RATHER THAN THE DURATION OF THE WORK TO BE CARRIED OUT.

Decision on costs

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 CENTRALE RAAD VAN BEROEP, THE DECISION AS TO COSTS IS A MATTER FOR THAT COURT.

Operative part

THE COURT

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE CENTRALE RAAD VAN BEROEP BY ORDER OF THAT COURT DATED 10 FEBRUARY 1967, HEREBY RULES :

1. A WORKER WHO IS EMPLOYED IN THE TERRITORY OF ONE MEMBER STATE BUT WHO RESIDES IN THE TERRITORY OF ANOTHER MEMBER STATE AND WHO IS CONVEYED AT HIS EMPLOYER'S EXPENSE BETWEEN HIS PLACE OF RESIDENCE AND HIS PLACE OF EMPLOYMENT REMAINS SUBJECT TO THE LEGISLATION OF THE FORMER STATE BY VIRTUE OF ARTICLE 12 OF REGULATION NO 3, EVEN AS REGARDS THAT PART OF THE JOURNEY WHICH TAKES PLACE IN THE TERRITORY OF THE STATE IN WHICH HE RESIDES AND IN WHICH THE UNDERTAKING IS ESTABLISHED;

2 . ARTICLE 12 OF REGULATION NO 3 PROHIBITS A MEMBER STATE OTHER THAN THAT IN WHOSE TERRITORY A WORKER IS EMPLOYED FROM APPLYING ITS SOCIAL SECURITY LEGISLATION TO SUCH WORKER WHERE TO DO SO WOULD LEAD TO AN INCREASE IN THE CHARGES BORNE BY WAGE-EARNERS OR THEIR EMPLOYERS, WITHOUT ANY CORRESPONDING SUPPLEMENTARY PROTECTIVE BY WAY OF SOCIAL SECURITY;

3 . DECISIONS TAKEN BY THE ADMINISTRATIVE COMMISSION IN PURSUANCE OF ARTICLE 43(A) OF REGULATION NO 3 ARE NOT BINDING ON NATIONAL COURTS OR TRIBUNALS;

4 . ARTICLE 13(A) OF REGULATION NO 3, AS WORDED PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64, APPLIES TO A WORKER WHO IS ENGAGED SOLELY FOR EMPLOYMENT IN THE TERRITORY OF A MEMBER STATE OTHER THAN THAT IN WHICH THE ESTABLISHMENT TO WHICH HE IS NORMALLY ATTACHED IS SITUATED, IN SO FAR AS THE PROBABLE DURATION OF HIS EMPLOYMENT IN THE TERRITORY OF THE FORMER STATE DOES NOT EXCEED TWELVE MONTHS;

5 . THE EXPRESSION ' THE PROBABLE DURATION OF THEIR EMPLOYMENT ' USED IN ARTICLE 13(A), AS WORDED PRIOR TO THE INTRODUCTION OF REGULATION NO 24/64, REFERS TO THE DURATION OF THE EMPLOYMENT OF EACH INDIVIDUAL WORKER;

6 . THE DECISION AS TO COSTS IS A MATTER FOR THE CENTRALE RAAD VAN BEROEP .