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Judgment of the Court (Second Chamber) of 23 September 1982. - Board of the Sociale Verzekeringsbank V Heirs or assigns of G.T. Kuijpers. - Reference for a preliminary ruling: Centrale Raad van Beroep - Netherlands. - Social security - Affiliation to Member States' schemes. - Case 276/81.

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### Keywords

*SOCIAL SECURITY FOR MIGRANT WORKERS - LEGISLATION APPLICABLE - DETERMINATION ON THE BASIS OF COMMUNITY LAW - WORKER WORKING IN TWO MEMBER STATES AND RESIDING IN THE TERRITORY OF ONE OF THEM - NATIONAL PROVISIONS OF THE STATE OF RESIDENCE EXCLUDING THE RIGHT TO RECEIVE AN OLD-AGE PENSION BECAUSE OF THE WORKER ' S AFFILIATION IN THE OTHER MEMBER STATE - NOT PERMISSIBLE*

*( REGULATION NO 3 OF THE COUNCIL , ART . 13 ( C ); REGULATION NO 1408/71 OF THE COUNCIL , ART . 14 ( 1 ) ( C ) ( I ) )*

### Summary

*IT FOLLOWS FROM THE PROVISIONS OF TITLE II OF REGULATIONS NO 3/58 AND NO 1408/71 THAT THE APPLICATION OF NATIONAL LEGISLATION IS DETERMINED BY REFERENCE TO CRITERIA DRAWN FROM THE RULES OF COMMUNITY LAW . ALTHOUGH 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 THAT SCHEME THE MEMBER STATES ARE NOT ENTITLED TO DETERMINE THE EXTENT TO WHICH THEIR OWN LEGISLATION OR THAT OF ANOTHER MEMBER STATE IS APPLICABLE .*

*ARTICLE 13 ( C ) OF REGULATION NO 3 AND ARTICLE 14 ( 1 ) ( C ) ( I ) OF REGULATION NO 1408/71 MUST BE INTERPRETED AS MEANING THAT A NATIONAL PROVISION OF A*

MEMBER STATE IS INCOMPATIBLE WITH THOSE PROVISIONS IF ITS EFFECT IS SUCH THAT A WORKER RESIDING IN THAT MEMBER STATE IS NOT INSURED FOR THE PURPOSES OF AN OLD-AGE PENSION BECAUSE HE IS INSURED FOR SUCH PURPOSES UNDER THE LEGISLATION OF ANOTHER MEMBER STATE , EVEN IF HE RESIDED IN THE TERRITORY OF THE FIRST-MENTIONED MEMBER STATE AND IS THERE ENGAGED IN GAINFUL EMPLOYMENT CONCURRENTLY WITH HIS ACTIVITIES IN THE TERRITORY OF THE OTHER MEMBER STATE . THAT ANSWER IS NOT AFFECTED BY THE FACT THAT THE EMPLOYMENT IN THE STATE OF RESIDENCE IS SECONDARY TO THE MAIN ACTIVITY OF THE PERSON CONCERNED WHICH IS PURSUED IN THE OTHER MEMBER STATE .

## **Parties**

*IN CASE 276/81*

*REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE CENTRALE RAAD VAN BEROEP ( COURT OF LAST INSTANCE IN SOCIAL SECURITY MATTERS ), UTRECHT , FOR A PRELIMINARY RULING IN THE PROCEEDINGS PENDING BEFORE THAT COURT BETWEEN*

*BOARD OF THE SOCIALE VERZEKERINGSBANK ( SOCIAL INSURANCE BANK )*

*AND*

*HEIRS OR ASSIGNS OF G . T . KUIJPERS*

## **Subject of the case**

*ON THE INTERPRETATION OF ARTICLE 13 ( C ) OF REGULATION NO 3 OF THE COUNCIL OF 25 SEPTEMBER 1958 CONCERNING SOCIAL SECURITY FOR MIGRANT WORKERS AND OF ARTICLE 14 ( 1 ) ( C ) ( I ) OF REGULATION NO 1408/71 OF THE COUNCIL OF 14 JUNE 1971 ON THE APPLICATION OF SOCIAL SECURITY SCHEMES TO EMPLOYED PERSONS AND THEIR FAMILIES MOVING WITHIN THE COMMUNITY ,*

## **Grounds**

*1 BY ORDER OF 29 SEPTEMBER 1981 , RECEIVED AT THE COURT ON 19 OCTOBER 1981 , THE CENTRALE RAAD VAN BEROEP ( COURT OF LAST INSTANCE IN SOCIAL SECURITY MATTERS ) REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION RELATING TO THE INTERPRETATION OF ARTICLE 13 ( C ) OF REGULATION NO 3 OF THE COUNCIL OF 25 SEPTEMBER 1958 CONCERNING SOCIAL SECURITY FOR MIGRANT WORKERS ( JOURNAL OFFICIEL 1958 , P . 561 ) AND ARTICLE 14 ( 1 ) ( C ) ( I ) OF REGULATION NO 1408/71 OF THE COUNCIL OF 14 JUNE 1971 ON THE APPLICATION OF SOCIAL SECURITY SCHEMES TO EMPLOYED PERSONS AND THEIR FAMILIES MOVING WITHIN THE COMMUNITIES ( OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1971 ( II ), P . 416 ), IN ORDER TO DETERMINE THE COMPATIBILITY WITH COMMUNITY LAW OF CERTAIN PROVISIONS OF THE NETHERLANDS LEGISLATION ON PENSIONS .*

*2 THE QUESTION WAS SUBMITTED IN THE CONTEXT OF PROCEEDINGS BETWEEN THE SOCIALE VERZEKERINGSBANK ( SOCIAL INSURANCE BANK ), A NETHERLANDS SOCIAL*

SECURITY INSTITUTION , AND THE HEIRS OR ASSIGNS OF G.T . KUIJPERS , WHOSE PENSION WAS REDUCED IN APPLICATION OF THE NETHERLANDS LEGISLATION .

3 MR KUIJPERS , A MARRIED NETHERLANDS WORKER , RESIDED IN THE NETHERLANDS FROM 1 JANUARY 1957 UNTIL THE END OF 1972 AND WORKED IN BELGIUM WHILE AT THE SAME TIME HOLDING EMPLOYMENT REGARDED AS SECONDARY IN THE NETHERLANDS FROM 1 JUNE 1966 TO 19 DECEMBER 1972 .

4 ACCORDING TO THE PROVISIONS OF ARTICLE 13 ( C ) OF REGULATION NO 3 OF THE COUNCIL AND ARTICLE 14 ( 1 ) ( C ) ( I ) OF REGULATION NO 1408/71 OF THE COUNCIL , MR KUIJPERS COULD BE CONSIDERED TO BE AFFILIATED TO THE NETHERLANDS GENERAL OLD-AGE INSURANCE SCHEME SET UP BY THE ALGEMENE OUDERDOMSWET ( LAW ON GENERAL OLD-AGE INSURANCE , HEREINAFTER REFERRED TO AS THE OLD-AGE LAW ), WHICH ENTERED INTO FORCE ON 1 JANUARY 1957 .

5 HOWEVER , ACCORDING TO ARTICLE 2 ( 1 ) ( A ) OF THE ROYAL DECREE OF 18 OCTOBER 1968 LAYING DOWN A GENERAL ADMINISTRATIVE MEASURE WITHIN THE MEANING OF ARTICLE 6 ( 2 ) AND ( 3 ) OF THE ABOVE-MENTIONED NETHERLANDS LAW , ' RESIDENTS WHO ARE EMPLOYED OUTSIDE THE NETHERLANDS AND BY VIRTUE OF THAT EMPLOYMENT ARE INSURED UNDER LEGISLATION ON OLD-AGE AND SURVIVORS ' PENSIONS AND FAMILY ALLOWANCES IN FORCE IN THE COUNTRY IN WHICH THEY WORK ' ' ARE NOT TREATED AS INSURED PERSONS FOR THE PURPOSES OF THAT LAW .

6 IN ADDITION , ACCORDING TO ARTICLE 2 ( 1 ) ( I ) OF THE SAID ROYAL DECREE A MARRIED WOMAN RESIDING IN THE KINGDOM WHOSE HUSBAND IS NOT INSURED UNDER THE PROVISIONS OF THAT PARAGRAPH IS NOT CONSIDERED AS INSURED UNDER THE OLD-AGE LAW .

7 IN ADDITION TO THOSE PROVISIONS , AND WITHIN THE SAME LEGISLATIVE FRAMEWORK , THERE ARE OTHERS WHICH PROVIDE THAT THE AMOUNT OF THE PENSION TO BE AWARDED TO THE PERSON CONCERNED IS TO BE REDUCED BY 1% IN RESPECT OF HIMSELF AND 1% IN RESPECT OF HIS SPOUSE FOR EVERY CALENDAR YEAR IN WHICH THEY WERE NOT INSURED UNDER THE OLD-AGE LAW .

8 THE AMOUNT OF THE PENSION AWARDED TO MR KUIJPERS WAS CONSEQUENTLY REDUCED BY THE COMPETENT NETHERLANDS INSTITUTION IN APPLICATION OF THE ABOVE-CITED PROVISIONS OF THE NETHERLANDS LEGISLATION , WHICH ARE ALLEGED BY THE DEFENDANTS IN THE MAIN ACTION TO BE INCOMPATIBLE WITH THE PROVISIONS OF COMMUNITY LAW .

9 THIS IS THE CONTEXT IN WHICH THE CENTRALE RAAD VAN BEROEP STAYED THE PROCEEDINGS AND REFERRED TO THE COURT THE FOLLOWING QUESTION :

' ' MUST ARTICLE 13 ( C ) OF REGULATION NO 3 AND ARTICLE 14 ( 1 ) ( C ) ( I ) OF REGULATION NO 1408/71 BE INTERPRETED AS MEANING THAT A NATIONAL PROVISION OF A MEMBER STATE IS INCOMPATIBLE WITH THOSE TWO PROVISIONS IF ITS EFFECT IS SUCH THAT A WORKER RESIDING IN THAT MEMBER STATE IS NOT INSURED FOR THE PURPOSES OF AN OLD-AGE PENSION BECAUSE HE IS INSURED FOR SUCH PURPOSES UNDER THE LEGISLATION OF ANOTHER MEMBER STATE , EVEN IF HE RESIDES IN THE TERRITORY OF THE FIRST-MENTIONED MEMBER STATE AND IS EMPLOYED IN THAT STATE ( ALBEIT IN WHAT MUST BE REGARDED AS A SECONDARY OCCUPATION ) AS WELL AS WORKING IN THE OTHER MEMBER STATE?

10 ACCORDING TO A CONSISTENT LINE OF DECISIONS OF THE COURT , THE AIM OF THE PROVISIONS CONTAINED IN TITLE II OF REGULATION NO 3 AND REGULATION NO 1408/71 , WHICH DETERMINE THE LEGISLATION APPLICABLE TO WORKERS MOVING WITHIN THE COMMUNITY , IS TO ENSURE THAT THE PERSONS CONCERNED SHALL BE SUBJECT TO THE SOCIAL SECURITY SCHEME OF ONLY ONE MEMBER STATE , IN ORDER TO PREVENT MORE THAN ONE NATIONAL LEGISLATION FROM BEING APPLICABLE AND THE COMPLICATIONS WHICH MAY RESULT FROM THAT SITUATION .

11 THIS PRINCIPLE , WHICH WAS APPLIED BY THE COURT IN RELATION TO REGULATION NO 3 , IS EXPRESSED IN ARTICLE 13 ( 1 ) OF REGULATION NO 1408/71 WHICH PROVIDES THAT ' ' A WORKER TO WHOM THIS REGULATION APPLIES SHALL BE SUBJECT TO THE LEGISLATION OF A SINGLE MEMBER STATE ONLY ' ' AND THAT THAT LEGISLATION ' ' SHALL BE DETERMINED IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE ' ' , THAT IS TO SAY TITLE II ON THE ' ' DETERMINATION OF THE LEGISLATION APPLICABLE ' ' .

12 ACCORDING TO ARTICLE 13 ( 2 ) ( A ) OF REGULATION NO 1408/71 , SUBJECT TO THE PROVISIONS OF ARTICLE 14 TO 17 A WORKER EMPLOYED IN THE TERRITORY OF ONE MEMBER STATE IS TO BE SUBJECT TO THE LEGISLATION OF THAT STATE EVEN IF HE RESIDES IN THE TERRITORY OF ANOTHER MEMBER STATE .

13 ARTICLE 14 ( 1 ) ( C ) ( I ) CREATES ONE OF THE EXCEPTIONS TO THE RULE LAID DOWN BY ARTICLE 13 ( 2 ) ( A ) BY PROVIDING THAT ' ' A WORKER , OTHER THAN ONE EMPLOYED IN INTERNATIONAL TRANSPORT , WHO NORMALLY PURSUES HIS ACTIVITY IN THE TERRITORY OF TWO OR MORE MEMBER STATES SHALL BE SUBJECT TO THE LEGISLATION OF THE MEMBER STATE IN WHOSE TERRITORY HE RESIDES , IF HE PURSUES HIS ACTIVITY PARTLY IN THAT TERRITORY OR IF HE IS ATTACHED TO SEVERAL UNDERTAKINGS OR SEVERAL EMPLOYERS WHO HAVE THEIR REGISTERED OFFICES OR PLACES OF BUSINESS IN THE TERRITORY OF DIFFERENT MEMBER STATES ' ' .

14 IT FOLLOWS FROM THE PROVISIONS CITED ABOVE THAT THE APPLICATION OF NATIONAL LEGISLATION IS DETERMINED BY REFERENCE TO CRITERIA DRAWN FROM THE RULES OF COMMUNITY LAW . ALTHOUGH THE COURT STATED IN ITS JUDGMENT OF 24 APRIL 1980 IN CASE 110/79 , COONAN V INSURANCE OFFICER , ( 1980 ) ECR 1445 , THAT 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 , IT MUST BE EMPHASIZED THAT THIS DOES NOT MEAN THAT THE MEMBER STATES ARE ENTITLED TO DETERMINE THE EXTENT TO WHICH THEIR OWN LEGISLATION OR THAT OF ANOTHER MEMBER STATE IS APPLICABLE .

15 FURTHERMORE , IT SHOULD BE NOTED THAT ARTICLE 14 ( 1 ) ( C ) ( I ) OF REGULATION NO 1408/71 DOES NOT CONTAIN ANY DISTINCTION BETWEEN A MAIN OCCUPATION AND A SECONDARY OCCUPATION .

16 THE QUESTION PUT TO THE COURT BY THE CENTRALE RAAD VAN BEROEP IS THEREFORE TO BE ANSWERED AS FOLLOWS :

ARTICLE 13 ( C ) OF REGULATION NO 3 AND ARTICLE 14 ( 1 ) ( C ) ( I ) OF REGULATION NO 1408/71 MUST BE INTERPRETED AS MEANING THAT A NATIONAL PROVISION OF A MEMBER STATE IS INCOMPATIBLE WITH THOSE PROVISIONS IF ITS EFFECT IS SUCH THAT A WORKER RESIDING IN THAT MEMBER STATE IS NOT INSURED FOR THE

*PURPOSES OF AN OLD-AGE PENSION BECAUSE HE IS INSURED FOR SUCH PURPOSES UNDER THE LEGISLATION OF ANOTHER MEMBER STATE , EVEN IF HE RESIDES IN THE TERRITORY OF THE FIRST-MENTIONED MEMBER STATE AND IS THERE ENGAGED IN GAINFUL EMPLOYMENT CONCURRENTLY WITH HIS ACTIVITIES IN THE TERRITORY OF THE OTHER MEMBER STATE . THAT ANSWER IS NOT AFFECTED BY THE FACT THAT THE EMPLOYMENT IN THE STATE OF RESIDENCE IS SECONDARY TO THE MAIN ACTIVITY OF THE PERSON CONCERNED WHICH IS PURSUED IN THE OTHER MEMBER STATE .*

## **Decision on costs**

### *COSTS*

*17 THE COSTS INCURRED BY THE COMMISSION , WHICH HAS SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . 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 , COSTS ARE A MATTER FOR THAT COURT .*

## **Operative part**

*ON THOSE GROUNDS ,*

*THE COURT ( SECOND CHAMBER ),*

*IN ANSWER TO THE QUESTION SUBMITTED TO IT BY THE CENTRALE RAAD VAN BEROEP , BY ORDER OF 29 SEPTEMBER 1981 , HEREBY RULES :*

*ARTICLE 13 ( C ) OF REGULATION NO 3 AND ARTICLE 14 ( 1 ) ( C ) ( I ) OF REGULATION NO 1408/71 MUST BE INTERPRETED AS MEANING THAT A NATIONAL PROVISION OF A MEMBER STATE IS INCOMPATIBLE WITH THOSE TWO PROVISIONS IF ITS EFFECT IS SUCH THAT A WORKER RESIDING WITHIN THAT MEMBER STATE IS NOT INSURED FOR THE PURPOSES OF AN OLD-AGE PENSION BECAUSE HE IS INSURED FOR SUCH PURPOSES UNDER THE LEGISLATION OF ANOTHER MEMBER STATE , EVEN IF HE RESIDES IN THE TERRITORY OF THE FIRST-MENTIONED MEMBER STATE AND IS THERE ENGAGED IN GAINFUL EMPLOYMENT CONCURRENTLY WITH HIS ACTIVITIES IN THE TERRITORY OF THE OTHER MEMBER STATE . THAT ANSWER IS NOT AFFECTED BY THE FACT THAT THE EMPLOYMENT IN THE STATE OF RESIDENCE IS SECONDARY TO THE MAIN ACTIVITY OF THE PERSON CONCERNED WHICH IS PURSUED IN THE OTHER MEMBER STATE .*