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Judgment of the Court (First Chamber) of 17 May 1984. - Raad van Arbeid v P.B. Brusse. - Reference for a preliminary ruling: Centrale Raad van Beroep - Netherlands. - Social security - Agreements made under Article 17 of Regulation N° 1408/71. - Case 101/83.

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Summary

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Decision on costs

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Keywords

1 . SOCIAL SECURITY FOR MIGRANT WORKERS - APPLICABLE LEGISLATION - DETERMINATION BY AGREEMENT BETWEEN TWO MEMBER STATES - RETROACTIVE EFFECT - PERMISSIBILITY - CONDITION

(REGULATION NO 1408/71 OF THE COUNCIL , ART . 17)

2 . SOCIAL SECURITY FOR MIGRANT WORKERS - FAMILY ALLOWANCES - WORKER SUBJECT TO THE LEGISLATION OF ONE MEMBER STATE - MEMBERS OF HIS FAMILY RESIDING IN ANOTHER MEMBER STATE - ENTITLEMENT TO FAMILY ALLOWANCES UNDER THE APPLICABLE LEGISLATION - RESIDENCE CLAUSE CONTAINED IN THAT LEGISLATION - CLAUSE NOT TO BE RELIED ON AS AGAINST WORKER

(REGULATION NO 1408/71 OF THE COUNCIL , ART . 73 (1))

Summary

1 . ARTICLE 17 OF REGULATION NO 1408/71 MAKES IT POSSIBLE FOR TWO MEMBER STATES , IN THE CASE OF A WORKER WHO FOR A LARGE NUMBER OF YEARS HAS NOT BEEN AFFILIATED TO THE SCHEME OF ONE OF THOSE MEMBER STATES WHICH WAS APPLICABLE TO HIM PURSUANT TO ARTICLES 13 TO 16 INCLUSIVE OF THE SAID REGULATION , BY AGREEMENT TO DECLARE APPLICABLE , IN RESPECT OF THOSE YEARS , THE LEGISLATION OF THE OTHER MEMBER STATE PROVIDED THAT SUCH AGREEMENT CORRESPONDS TO THE INTERESTS OF THE WORKER CONCERNED .

2. ARTICLE 73 (1) OF REGULATION NO 1408/71 CREATES , IN FAVOUR OF A WORKER WHO IS SUBJECT TO THE LEGISLATION OF A MEMBER STATE OTHER THAN THE STATE IN WHOSE TERRITORY THE MEMBERS OF HIS FAMILY RESIDE , A REAL ENTITLEMENT TO THE FAMILY ALLOWANCES PROVIDED FOR BY THE APPLICABLE LEGISLATION . THAT ENTITLEMENT CANNOT BE DEFEATED BY THE APPLICATION OF A PROVISION OF THAT LEGISLATION BY VIRTUE OF WHICH PERSONS NOT RESIDING IN THE TERRITORY OF THE MEMBER STATE IN QUESTION ARE NOT TO RECEIVE FAMILY ALLOWANCES .

IN CONNECTION WITH ARTICLE 73 IT IS IRRELEVANT WHETHER THE LEGISLATION TO WHICH THE WORKER IS SUBJECT WAS DETERMINED BY APPLICATION OF ARTICLES 13 TO 16 OF REGULATION NO 1408/71 OR ON THE BASIS OF AN AGREEMENT CONCLUDED PURSUANT TO ARTICLE 17 OF THAT REGULATION .

Parties

IN CASE 101/83

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) (NETHERLANDS), FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

RAAD VAN ARBEID (LABOUR COUNCIL), AMSTERDAM ,

AND

P . B . BRUSSE ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 17 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 (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1971 (II), P . 416),

Grounds

1 BY ORDER OF 19 OCTOBER 1982 , WHICH WAS RECEIVED AT THE COURT ON 31 MAY 1983 , 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 TWO QUESTIONS RELATING TO THE INTERPRETATION OF ARTICLE 17 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 (OFFICIAL JOURNAL ENGLISH SPECIAL EDITION 1971 (II), P . 416).

2 THE QUESTIONS WERE RAISED IN PROCEEDINGS BROUGHT BY P . BRUSSE AGAINST THE RAAD VAN ARBEID (LABOUR COUNCIL), AMSTERDAM .

3 HAVING PREVIOUSLY WORKED IN THE NETHERLANDS , MR BRUSSE , A NETHERLANDS NATIONAL , HAS LIVED AND WORKED IN THE UNITED KINGDOM SINCE 1 SEPTEMBER 1964 . ACCORDING TO ARTICLE 13 (2) (A) OF REGULATION NO 1408/71 HE SHOULD HAVE BEEN SUBJECT TO THE SOCIAL SECURITY LEGISLATION OF THE MEMBER STATE IN WHICH HE WAS EMPLOYED , THAT IS TO SAY , IN RELATION TO THE PERIOD COMMENCING ON 1 SEPTEMBER 1964 , THE UNITED KINGDOM . HOWEVER , HE WAS NEVER AFFILIATED TO THE UNITED KINGDOM SOCIAL SECURITY SCHEME AND CONTINUED TO PAY VOLUNTARY CONTRIBUTIONS TO THE NETHERLANDS SCHEME .

4 WHEN THE IRREGULARITY OF MR BRUSSE ' S SITUATION WAS DISCOVERED IN 1977 THE RELEVANT UNITED KINGDOM AND NETHERLANDS AUTHORITIES DECIDED , IN VIEW OF THE FACT THAT THE IRREGULARITY HAD EXISTED FOR SEVERAL YEARS , TO CONCLUDE AN AGREEMENT PURSUANT TO ARTICLE 17 OF REGULATION NO 1408/71 .

5 ARTICLE 17 IS WORDED AS FOLLOWS :

'' TWO OR MORE MEMBER STATES OR THE COMPETENT AUTHORITIES OF THOSE STATES MAY , BY COMMON AGREEMENT , PROVIDE FOR EXCEPTIONS TO THE PROVISIONS OF ARTICLES 13 AND 16 IN THE INTEREST OF CERTAIN WORKERS OR CATEGORIES OF WORKERS . ''

6 ACCORDING TO THE AGREEMENT RELATING TO MR BRUSSE CONCLUDED BY THOSE AUTHORITIES HE WAS TO BE REGARDED AS SUBJECT TO THE NETHERLANDS SOCIAL SECURITY SCHEME FOR THE PERIOD ENDING ON 31 DECEMBER 1977 . HOWEVER , AS FROM THAT DATE THE UNITED KINGDOM LEGISLATION WAS TO BE APPLICABLE TO HIM .

7 ON THE BASIS OF THAT AGREEMENT MR BRUSSE ' S EMPLOYER ASKED THE RAAD VAN ARBEID , AMSTERDAM , TO AWARD MR BRUSSE THE FAMILY ALLOWANCES PAYABLE TO HIM UNDER NETHERLANDS LEGISLATION FOR THE PERIOD IN RESPECT OF WHICH IT HAD BEEN AGREED THAT THAT LEGISLATION WOULD APPLY TO HIM .

8 THE RAAD VAN ARBEID REJECTED THAT REQUEST , CONTENDING THAT THE NETHERLANDS LEGISLATION PROVIDES FOR PAYMENT OF FAMILY ALLOWANCES ONLY TO WORKERS RESIDING IN THE NETHERLANDS AND THAT MR BRUSSE DID NOT FULFIL THAT CONDITION DURING THE RELEVANT PERIOD . IN ADDITION THE RAAD VAN ARBEID DENIED THAT THE AGREEMENT CONCERNING MR BRUSSE WAS AN AGREEMENT WITHIN THE MEANING OF ARTICLE 17 OF REGULATION NO 1408/71 .

9 MR BRUSSE CHALLENGED THAT DECISION BEFORE THE RAAD VAN BEROEP (SOCIAL SECURITY COURT), AMSTERDAM , WHICH UPHELD HIS RIGHT TO THE FAMILY ALLOWANCES IN QUESTION . THE RAAD VAN ARBEID APPEALED AGAINST THAT DECISION TO THE CENTRALE RAAD VAN BEROEP . THAT COURT DECIDED TO STAY THE PROCEEDINGS AND TO REFER THE FOLLOWING QUESTIONS TO THE COURT :

'' 1 . DOES ARTICLE 17 OF REGULATION NO 1408/71 ENABLE TWO MEMBER STATES , IN THE CASE WHERE A WORKER OVER A NUMBER OF YEARS WAS NOT AFFILIATED TO THE SOCIAL SECURITY SCHEME OF ONE OF THOSE MEMBER STATES WHICH WAS APPLICABLE TO HIM PURSUANT TO ARTICLES 13 AND 16 OF REGULATION NO 1408/71 ,

TO DECLARE BY AGREEMENT THAT , IN RESPECT OF THOSE YEARS , THE SCHEME OF THE OTHER MEMBER STATE (WHERE THE EMPLOYEE RESIDED BEFORE MOVING TO THE FIRST MEMBER STATE) IS APPLICABLE?

2. IF THE REPLY TO THE FIRST QUESTION IS IN THE AFFIRMATIVE (AND ASSUMING THAT THE COURT OF JUSTICE HAS JURISDICTION TO PRONOUNCE BY WAY OF A PRELIMINARY RULING UPON THE AGREEMENT BETWEEN TWO MEMBER STATES MENTIONED IN THE FIRST QUESTION) IS THE WORKER CONCERNED ENTITLED TO FAMILY ALLOWANCES UNDER THE SCHEME OF A MEMBER STATE INDICATED IN THAT AGREEMENT EVEN IF HE DOES NOT SATISFY THE CONDITION FOR ENTITLEMENT TO FAMILY ALLOWANCES LAID DOWN IN THAT SCHEME , NAMELY RESIDENCE IN THE TERRITORY OF THAT MEMBER STATES?

''

THE COURT ' S JURISDICTION

10 IN THE SECOND QUESTION THE CENTRALE RAAD VAN BEROEP EXPRESSES DOUBTS , PARENTHETICALLY , AS TO THE COURT ' S JURISDICTION TO PRONOUNCE BY WAY OF A PRELIMINARY RULING UNDER ARTICLE 177 OF THE TREATY UPON AN AGREEMENT MADE BETWEEN TWO MEMBER STATES UNDER ARTICLE 17 OF REGULATION NO 1408/71

11 THERE IS NO NEED TO CONSIDER WHETHER THE COURT MAY , UNDER ARTICLE 177 OF THE TREATY , PRONOUNCE ON THE VALIDITY OR INTERPRETATION OF SUCH AN AGREEMENT SINCE IT HAS JURISDICTION , IN ANY EVENT , TO DEFINE THE SCOPE OF ARTICLE 17 OF REGULATION NO 1408/71 SO AS TO ENABLE THE NATIONAL COURT TO GIVE JUDGMENT IN THE CASE BEFORE IT IN ACCORDANCE WITH THE COMMUNITY RULES .

THE FIRST QUESTION

12 THE CENTRALE RAAD VAN BEROEP ' S FIRST QUESTION SEEKS , ESSENTIALLY , TO ASCERTAIN WHETHER TWO MEMBER STATES MAY , BY MEANS OF AN AGREEMENT CONCLUDED UNDER ARTICLE 17 OF REGULATION NO 1408/71 , DECIDE , WITH RETROACTIVE EFFECT , THAT THE LEGISLATION OF ONE OF THOSE MEMBER STATES , WHICH IS APPLICABLE TO A WORKER PURSUANT TO ARTICLES 13 TO 16 , DOES NOT APPLY TO HIM AND THAT THE LEGISLATION OF THE OTHER STATE IS APPLICABLE TO HIM IN RESPECT OF A GIVEN PERIOD . 13 BEFORE A REPLY IS GIVEN TO THAT QUESTION , ARTICLE 17 MUST BE PLACED IN ITS LEGAL CONTEXT .

14 AS THE COURT HAS RECENTLY POINTED OUT (JUDGMENT OF 23 SEPTEMBER 1982 IN CASE 276/81 BOARD OF THE SOCIALE VERZEKERINGSBANK V HEIRS OR ASSIGNS OF G . T . KUIJPERS (1982) ECR 3027) THE AIM OF THE PROVISIONS OF TITLE II OF 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 ' ' .

15 IN ORDER TO ACHIEVE THAT AIM ARTICLE 13 (2) (A) LAYS DOWN THE GENERAL PRINCIPLE THAT A WORKER IS TO BE SUBJECT , WITH REGARD TO SOCIAL SECURITY MATTERS , TO THE LEGISLATION OF THE MEMBER STATE IN WHOSE TERRITORY HE IS EMPLOYED .

16 NEVERTHELESS THAT GENERAL PRINCIPLE IS STATED TO BE ' ' SUBJECT TO THE PROVISIONS OF ARTICLES 14 TO 17 ' ' . IN FACT , IN CERTAIN SPECIFIC SITUATIONS THE UNRESERVED APPLICATION OF THE RULE SET OUT IN ARTICLE 13 (2) (A) MIGHT CREATE , INSTEAD OF PREVENT , ADMINISTRATIVE COMPLICATIONS FOR WORKERS AS WELL AS FOR EMPLOYERS AND SOCIAL SECURITY AUTHORITIES , WHICH WOULD ENTAIL DELAYS IN THE FORWARDING OF EMPLOYEES ' FILES AND , THEREFORE , PLACE OBSTACLES IN THE WAY OF THEIR FREEDOM OF MOVEMENT . SPECIAL RULES GOVERNING SUCH SITUATIONS ARE SET OUT IN ARTICLES 14 TO 16 .

17 IN ADDITION , ARTICLE 17 ALLOWS EXCEPTIONS TO BE MADE IN ORDER TO COVER OTHER SITUATIONS WHICH , ALTHOUGH THEY ARE NOT SPECIFICALLY PROVIDED FOR IN TITLE II OF REGULATION NO 1408/71 , CALL FOR A SOLUTION WHICH DIFFERS FROM THOSE ADOPTED IN ARTICLES 13 TO 16 . THE TASK OF IDENTIFYING THOSE SITUATIONS AND DETERMINING THE LEGISLATION TO BE APPLIED IS ENTRUSTED BY ARTICLE 17 TO THE MEMBER STATES CONCERNED , WHICH MAY , BY COMMON AGREEMENT , DEROGATE FROM ARTICLES 13 TO 16 PROVIDED THE AGREEMENT IS CONCLUDED ' ' IN THE INTEREST OF CERTAIN WORKERS ' ' .

18 CONSEQUENTLY , IT IS WHOLLY CONSISTENT WITH THE SCHEME OF REGULATION NO 1408/71 , AND IN PARTICULAR WITH ARTICLE 17 THEREOF , FOR TWO MEMBER STATES TO CONCLUDE AN AGREEMENT WITH A VIEW TO SUBJECTING A WORKER TO LEGISLATION OTHER THAN THAT DESIGNATED IN ARTICLES 13 TO 16 , PROVIDED THAT THE AGREEMENT IS IN THE INTERESTS OF THAT WORKER .

19 THE NATIONAL COURT HAS EXPRESSED DOUBTS AS TO WHETHER SUCH A DEROGATION MIGHT BE GIVEN RETROACTIVE EFFECT , THAT IS TO SAY WHETHER THE LEGISLATION DESIGNATED BY THE MEMBER STATES IN DEROGATION FROM ARTICLES 13 TO 16 MAY BE REGARDED AS APPLICABLE IN RESPECT OF PAST PERIODS .

20 THERE IS NOTHING IN THE WORDING OF ARTICLE 17 TO INDICATE THAT RECOURSE TO THE DEROGATION MADE AVAILABLE TO THE MEMBER STATES BY THAT PROVISION IS POSSIBLE ONLY AS REGARDS THE FUTURE .

21 ON THE CONTRARY , IT FOLLOWS FROM THE SPIRIT AND SCHEME OF ARTICLE 17 THAT AN AGREEMENT WITHIN THE MEANING OF THAT PROVISION MUST ALSO BE CAPABLE , IN THE INTERESTS OF THE WORKER OR WORKERS CONCERNED , OF COVERING PAST PERIODS . SINCE ARTICLE 17 PROVIDES FOR AN EXCEPTION INTENDED TO MITIGATE THE DIFFICULTIES RESULTING FROM THE APPLICATION OF ARTICLES 13 TO 16 TO SPECIAL SITUATIONS NOT SPECIFICALLY ENVISAGED IN REGULATION NO 1408/71 , IT MAY BE USED NOT ONLY TO ENSURE THAT A CERTAIN SITUATION DOES NOT ARISE BUT ALSO TO REMEDY AN EXISTING SITUATION THE INJUSTICE OF WHICH APPEARS ONLY AFTER IT HAS ARISEN .

22 IT MUST ALSO BE EMPHASIZED THAT , IN VIEW OF THE TIME NEEDED FOR TWO OR MORE MEMBER STATES TO REACH AGREEMENT AS TO WHETHER IT IS APPROPRIATE TO DEROGATE FROM ARTICLES 13 TO 16 , ARTICLE 17 WOULD BE DEPRIVED OF MUCH OF ITS MEANING IF THE AGREEMENT COULD HAVE ONLY PROSPECTIVE EFFECT .

23 IT MUST THEREFORE BE CONCLUDED THAT AN AGREEMENT ENTERED INTO BETWEEN TWO OR MORE MEMBER STATES PURSUANT TO ARTICLE 17 OF REGULATION NO 1408/71 MAY DECLARE LEGISLATION OTHER THAN THAT DESIGNATED IN ARTICLES 13 TO 16 APPLICABLE IN RESPECT OF PAST PERIODS PROVIDED , OF COURSE , THAT THE AGREEMENT IS IN THE INTERESTS OF THE WORKER OR WORKERS IN QUESTION .

24 IN ITS OBSERVATIONS SUBMITTED TO THE COURT THE RAAD VAN ARBEID MAINTAINS THAT MEMBER STATES MAY NOT AVAIL THEMSELVES OF THEIR RIGHT TO DEROGATE FROM ARTICLES 13 TO 16 IN A CASE SUCH AS THIS WHERE THE WORKER IN QUESTION HAS FAILED TO AFFILIATE HIMSELF TO THE SOCIAL SECURITY SCHEME DESIGNATED IN ARTICLE 13 (2) (A) .

25 NO SUCH RESTRICTION ON THE POWER CONFERRED UPON THE MEMBER STATES APPEARS ANYWHERE IN ARTICLE 17 . ON THE CONTRARY , THAT PROVISION MAKES NO REFERENCE TO THE REASONS OR CIRCUMSTANCES WHICH MIGHT LEAD THE MEMBER STATES TO DEROGATE FROM ARTICLES 13 TO 16 . IT FOLLOWS THAT , IN THAT RESPECT , THE MEMBER STATES ENJOY A WIDE DISCRETION TO WHICH THE ONLY LIMITATION IS REGARD FOR THE INTERESTS OF THE WORKER .

26 CONSEQUENTLY THE REPLY TO THE FIRST QUESTION MUST BE THAT ARTICLE 17 OF REGULATION NO 1408/71 MAKES IT POSSIBLE FOR TWO MEMBER STATES , IN THE CASE OF A WORKER WHO FOR A LARGE NUMBER OF YEARS HAS NOT BEEN AFFILIATED TO THE SCHEME OF ONE OF THOSE MEMBER STATES WHICH WAS APPLICABLE TO HIM PURSUANT TO ARTICLES 13 TO 16 INCLUSIVE OF THE SAID REGULATION , BY AGREEMENT TO DECLARE APPLICABLE , IN RESPECT OF THOSE YEARS , THE LEGISLATION OF THE OTHER MEMBER STATE PROVIDED THAT SUCH AGREEMENT CORRESPONDS TO THE INTERESTS OF THE WORKER CONCERNED .

THE SECOND QUESTION

27 THE CENTRALE RAAD VAN BEROEP ' S SECOND QUESTION SEEKS TO ASCERTAIN WHETHER A WORKER , TO WHOM THE LEGISLATION OF A MEMBER STATE OTHER THAN THE STATE IN WHICH HE AND HIS FAMILY RESIDE HAS BEEN MADE APPLICABLE BY MEANS OF AN AGREEMENT CONCLUDED UNDER ARTICLE 17 OF REGULATION NO 1408/71 , IS ENTITLED TO BE GRANTED THE FAMILY ALLOWANCES PROVIDED FOR BY THAT LEGISLATION EVEN IF THAT LEGISLATION LIMITS THE GRANT OF SUCH ALLOWANCES TO PERSONS RESIDING IN THE TERRITORY OF THE MEMBER STATE IN QUESTION .

28 IN THE FIRST PLACE IT SHOULD BE STATED THAT THE REPLY TO BE GIVEN TO THAT QUESTION DOES NOT DEPEND ON ARTICLES 13 TO 17 OF REGULATION NO 1408/71 , WHOSE SOLE PURPOSE IS TO ENABLE THE LEGISLATION APPLICABLE TO VARIOUS WORKERS MOVING WITHIN THE COMMUNITY TO BE DETERMINED , BUT RATHER ON THE PROVISIONS OF NATIONAL LAW APPLICABLE BY VIRTUE OF ARTICLES 13 TO 17 , PROVIDED , HOWEVER , THAT THOSE PROVISIONS ARE CONSISTENT WITH THE RELEVANT RULES OF COMMUNITY LAW .

29 WITH REGARD TO ENTITLEMENT TO FAMILY ALLOWANCES , THEREFORE , IT IS NECESSARY TO TAKE ACCOUNT OF ARTICLE 73 (1) OF REGULATION NO 1408/71 WHICH STATES THAT :

'' A WORKER SUBJECT TO THE LEGISLATION OF A MEMBER STATE OTHER THAN FRANCE SHALL BE ENTITLED TO FAMILY BENEFITS PROVIDED FOR BY THE LEGISLATION OF THE FIRST MEMBER STATE FOR MEMBERS OF HIS FAMILY RESIDING IN THE TERRITORY OF ANOTHER MEMBER STATE , AS THOUGH THEY WERE RESIDING IN THE

TERRITORY OF THE FIRST STATE . ''

30 THAT ARTICLE CREATES , IN FAVOUR OF A WORKER WHO , AS IN THE CASE ENVISAGED IN THE ORDER MAKING THE REFERENCE , IS SUBJECT TO THE LEGISLATION OF A MEMBER STATE OTHER THAN THE STATE IN WHOSE TERRITORY THE MEMBERS OF HIS FAMILY RESIDE , A REAL ENTITLEMENT TO THE FAMILY ALLOWANCES PROVIDED FOR BY THE APPLICABLE LEGISLATION . THAT ENTITLEMENT CANNOT BE DEFEATED BY THE APPLICATION OF A PROVISION OF THAT LEGISLATION BY VIRTUE OF WHICH PERSONS NOT RESIDING IN THE TERRITORY OF THE MEMBER STATE IN QUESTION ARE NOT TO RECEIVE FAMILY ALLOWANCES .

31 IT MUST ALSO BE ADDED IN CONNECTION WITH ARTICLE 73 THAT IT IS IRRELEVANT WHETHER THE LEGISLATION TO WHICH THE WORKER IS SUBJECT WAS DETERMINED BY APPLICATION OF ARTICLES 13 TO 16 OF REGULATION NO 1408/71 OR ON THE BASIS OF AN AGREEMENT CONCLUDED PURSUANT TO ARTICLE 17 OF THAT REGULATION .

32 CONSEQUENTLY THE REPLY TO THE SECOND QUESTION MUST BE THAT A WORKER WHO HAS BEEN SUBJECT , ON THE BASIS OF AN AGREEMENT CONCLUDED UNDER THE TERMS OF ARTICLE 17 OF REGULATION NO 1408/71 , TO THE LEGISLATION OF A MEMBER STATE OTHER THAN THE ONE IN WHICH THE MEMBERS OF HIS FAMILY RESIDE IS ENTITLED , UNDER ARTICLE 73 OF THE SAID REGULATION , TO FAMILY BENEFITS PROVIDED FOR BY THE LEGISLATION DESIGNATED BY THAT AGREEMENT NOTWITHSTANDING THE FACT THAT HE DOES NOT SATISFY THE TERMS OF A PROVISION AS TO RESIDENCE CONTAINED IN THAT LEGISLATION .

Decision on costs

COSTS

33 THE COSTS INCURRED BY THE GOVERNMENT OF THE NETHERLANDS , BY THE UNITED KINGDOM AND BY THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE 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 , THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,

THE COURT (FIRST CHAMBER)

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE CENTRALE RAAD VAN BEROEP BY ORDER OF 19 OCTOBER 1982 , HEREBY RULES :

1 . ARTICLE 17 OF REGULATION NO 1408/71 MAKES IT POSSIBLE FOR TWO MEMBER STATES , IN THE CASE OF A WORKER WHO FOR A LARGE NUMBER OF YEARS HAS NOT BEEN AFFILIATED TO THE SCHEME OF ONE OF THOSE MEMBER STATES WHICH WAS APPLICABLE TO HIM PURSUANT TO ARTICLES 13 TO 16 INCLUSIVE OF THE SAID REGULATION , BY AGREEMENT TO DECLARE APPLICABLE , IN RESPECT OF THOSE YEARS , THE LEGISLATION OF THE OTHER MEMBER STATE PROVIDED THAT SUCH AGREEMENT CORRESPONDS TO THE INTERESTS OF THE WORKER CONCERNED ;

2.A WORKER WHO HAS BEEN SUBJECT , ON THE BASIS OF AN AGREEMENT CONCLUDED UNDER THE TERMS OF ARTICLE 17 OF REGULATION NO 1408/71 , TO THE LEGISLATION OF A MEMBER STATE OTHER THAN THE ONE IN WHICH THE MEMBERS OF HIS FAMILY RESIDE IS ENTITLED , BY VIRTUE OF ARTICLE 73 OF THE SAID REGULATION , TO FAMILY BENEFITS PROVIDED FOR BY THE LEGISLATION DESIGNATED BY THAT AGREEMENT NOTWITHSTANDING THE FACT THAT HE DOES NOT SATISFY THE TERMS OF A PROVISION AS TO RESIDENCE CONTAINED IN THAT LEGISLATION .