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Judgment of the Court of 21 February 1991. - G. C. Noij v Staatssecretaris van Financiën. - Reference for a preliminary ruling: Hoge Raad - Netherlands. - Social security - Determination of the applicable legislation. - Case C-140/88.

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Keywords

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Social security for migrant workers - Applicable legislation - Pensioners - Applicability of the legislation of the State of residence notwithstanding payment of the pension by another Member State - Whether permissible - Charging by the State of residence of contributions to cover benefits payable by the Member State paying the pension - Not permissible - Previous pursuit of a professional or trade activity in the State of residence - No effect

(Regulation No 1408/71)

Summary

The rules of Community law, in particular the provisions in Titles II and III of Regulation No 1408/71, do not preclude a person who has worked as an employed person in the territory of one Member State as a result of which he receives a retirement pension and later establishes his residence in another Member State in which he does not carry on any activity from being subject to the legislation of the latter State. However, those rules do prevent such a person from being required to pay in that State, by virtue of his residing there, contributions for compulsory insurance to cover benefits payable by an institution of another Member State.

The same principles would apply if, before the period to which the contributions in question relate, the person concerned had carried on a professional or trade activity, whatever its importance, either as an employed person or as a self-employed person, in the territory of the Member State of residence.

Parties

In Case C-140/88,

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 proceedings pending before that court between

G. C. Noij

and

Staatssecretaris van Financiën (State Secretary for Finance),

on the interpretation of Title II of Regulation (EEC) 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, as amended by Council Regulation (EEC) No 1517/79 of 16 July 1979 (OJ 1979 L 185, p. 1),

THE COURT

composed of: O. Due, President, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), C. N. Kakouris, F. Grévisse and M. Zuleeg, Judges,

Advocate General: J. Mischo

Registrar: J. A. Pompe, Deputy Registrar,

after considering the observations submitted on behalf of

the Government of the Kingdom of the Netherlands, by Egbert Frederik Jacobs, Secretary-General at the Ministry of Foreign Affairs, acting as Agent,

the Government of the Kingdom of Spain, by Javier Conde de Saro, Director-General for Legal and Institutional Coordination with the Community, and Rosario Silva Lapuerta, Abogado del Estado, acting as Agents,

the Commission of the European Communities, by René Barents, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Netherlands Government, represented by J. W. De Zwaan, acting as Agent, the Spanish Government and the Commission at the hearing on 16 May 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 June 1990,

gives the following

Judgment

Grounds

1 By judgment of 11 May 1988, which was received at the Court on 20 May 1988, the Hoge Raad der Nederlanden referred two questions to the Court under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of Regulation (EEC) 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, as amended by Council Regulation (EEC) No 1517/79 of 16 July 1979.

2 Those questions were raised in a dispute between Mr Noij and the State Secretary for Finance concerning the contributions which Mr Noij was called on to pay for 1979 under the Netherlands general social security scheme.

3 It is apparent from the order for reference that Mr Noij is a Netherlands national who settled in the Netherlands after working underground for 25 years as a miner in Belgium. Although he is in receipt of a retirement pension under Belgian law, which entails entitlement to Belgian family allowances and sickness benefits, Mr Noij is subject, as a Netherlands resident, to the general social security scheme.

4 The advantages granted by the two schemes are essentially the same, except for certain benefits which may, under the Netherlands scheme, be granted in order to facilitate living and working conditions. Similar benefits are available under the Belgian scheme but they are linked to residence within the territory of that State.

5 According to the order for reference, Mr Noij was called on to pay, inter alia, contributions under the Netherlands Algemene Wet Bijzondere Ziektekosten (General Law on Exceptional Medical Expenses) although his sickness benefits are payable by the Belgian institution until he reaches the age of 65.

6 Taking the view that the charging of the aforesaid contributions, calculated on the basis of his retirement pension and amounting to 23% thereof, was incompatible with the provisions of the EEC Treaty concerning freedom of movement for workers and with those of Regulation No 1408/71, Mr Noij brought an action against the decision in question before the Gerechtshof (Regional Court of Appeal) 's-Hertogenbosch. That action was dismissed on the ground that the appellant could not be regarded as a worker within the meaning of Article 1 of that regulation, whereupon Mr Noij lodged an appeal in cassation with the Hoge Raad der Nederlanden which, since it considered that the interpretation of several provisions of Community law was called for, stayed the proceedings pending a preliminary ruling from the Court on the following questions:

"1. Do the rules on social security forming part of European Community law and intended to achieve freedom of movement for workers within the Community, in particular the rules on the determination of the national legislation applicable contained in Title II of Regulation (EEC) No 1408/71 of the Council of 14 June 1971, prevent a person who resides in the territory of one Member State (hereinafter referred to as 'the State of residence') and who since ceasing the activity which he pursued in the territory of another Member State as an employed person has been in receipt of a retirement pension in respect of that activity by virtue of the social legislation of that other Member State from being charged contributions, partly on the basis of that retirement pension, as a person subject to compulsory insurance under the social legislation of the State of residence:

(a) if, after ceasing the activity pursued in the territory of the other Member State, he no longer worked at all?

(b) if, after ceasing that activity, he worked in the territory of the State of residence for some time, either as an employed person or as a self-employed person?

2. Is the answer to Question 1 different if the activity carried on in the State of residence referred to in (b) above was of only secondary importance?"

7 Reference is made to the Report for the Hearing for a fuller account of the Netherlands legislation and the relevant provisions of Community law, as well as 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.

The first part of Question 1

8 In the first part of Question 1 the national court seeks in substance to ascertain whether the rules of Community law, and in particular the provisions in Titles II and III of Regulation No 1408/71, preclude a person who has worked as an employed person in the territory of one Member State as a result of which he receives a retirement pension and later establishes his residence in another Member State in which he does not carry on any activity from being subject to the legislation of the latter State and accordingly being required to pay contributions for compulsory insurance calculated on the basis of his income including the aforesaid pension.

9 It should be noted in the first place that none of the provisions of Title II of Regulation No 1408/71 is applicable in a case such as this. Mr Noij is not in one of the situations referred to in Article 13(2)(b), (c), (d) or (e) or in Articles 14 to 17. As for Article 13(2)(a), according to which "a worker employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State", it applies only to those working as employed persons.

10 The latter provision is designed to resolve conflicts of legislation which may arise where, during a single period, the place of residence and the place of employment are not situated in the same Member State. Such conflicts can no longer arise in the case of workers who have definitively ceased all professional or trade activity.

11 As regards Title III of Regulation No 1408/71 which contains specific provisions for different categories of pensions, it should be noted that Article 33, in the version as amended by Regulation (EEC) No 2864/72 of the Council of 19 December 1972 (OJ, English Special Edition 1972 (31 December) p. 15) which is applicable in this case, already precluded the institution of a Member State responsible for payment of a pension from charging contributions to cover the sickness and maternity benefits payable by an institution of another Member State (see the judgment of 28

March 1985 in Case 275/83, *Commission v Belgium* [1985] ECR 1097, at paragraph 3).

12 That article was amended by Council Regulation (EEC) No 2332/89 of 18 July 1989 (OJ 1989 L 224, p. 1), which added a second paragraph to Article 33, according to which a Member State in which a pensioner resides, which operates a general insurance scheme and under whose legislation no pension is payable cannot require the pensioner, by virtue of his residence in its territory, to pay contributions to cover benefits payable by the institution of another Member State.

13 Those provisions pursue the objective of Regulation No 1408/71, which is to contribute to the establishment of the fullest possible freedom of movement for migrant workers. With that end in view, a number of other provisions are designed to remove barriers to that fundamental freedom similar to those resulting from the contributions at issue, in particular barriers arising from the transfer of residence from one Member State to another and the simultaneous application of several national legislative systems. It would be contrary to that objective if, in the absence of grounds of general interest, a worker could be deprived of part of a pension received under the legislation of one Member State simply because he has gone to reside in another Member State.

14 It follows from the foregoing that the rules laid down by the aforesaid Article 33 concerning sickness or maternity benefits constitute the application of a more general principle according to which a pensioner cannot be required, because he resides in the territory of a Member State, to pay compulsory insurance contributions to cover benefits payable by an institution of another Member State.

15 The answer to the first part of the first question must therefore be that the rules of Community law, and in particular the provisions in Titles II and III of Regulation (EEC) 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, do not preclude a person who has worked as an employed person in the territory of one Member State as a result of which he receives a retirement pension and later establishes his residence in another Member State in which he does not carry on any activity from being subject to the legislation of the latter State. However, those rules do prevent such a person from being required to pay in that State, by virtue of his residing there, contributions for compulsory insurance to cover benefits payable by an institution of another Member State.

The second part of Question 1 and Question 2

16 It is apparent from the order for reference that in these questions the national court seeks in substance to ascertain whether the reply is the same where, in the situation referred to in Question 1 and before the period to which the contributions in question relate, the person concerned had carried on a professional or trade activity even if it was of secondary importance, either as an employed person or as a self-employed person, in the territory of the Member State of residence.

17 It should be noted in that regard that the fact that the person concerned worked in such circumstances cannot affect the answer given to Question 1. For the aforesaid reasons the provisions of Title II of Regulation No 1408/71 are not applicable and there are no grounds in this case for departing from the principle that a pensioner cannot be required, by virtue of his residing in the territory of a Member State, to pay contributions for compulsory insurance to cover benefits payable by an institution of another Member State.

18 The answer to the second part of Question 1 and to Question 2 must therefore be that the reply is the same where, in the situation referred to in Question 1 and before the period to which the contributions in question relate, the person concerned had carried on a professional or trade activity even if it was of secondary importance, either as an employed person or as a self-employed person, in the territory of the Member State of residence.

Decision on costs

Costs

19 The costs incurred by the Netherlands Government, the Spanish Government and 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 proceedings 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,

in answer to the questions referred to it by the Hoge Raad der Nederlanden, by judgment of 11 May 1988, hereby rules:

(1) The rules of Community law, and in particular the provisions in Titles II and III of Regulation (EEC) 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, do not preclude a person who has worked as an employed person in the territory of one Member State as a result of which he receives a retirement pension and later establishes his residence in another Member State in which he does not carry on any activity from being subject to the legislation of the latter State. However, those rules do prevent such a person from being required to pay in that State, by virtue of his residing there, contributions for compulsory insurance to cover benefits payable by an institution of another Member State.

(2) The reply is the same where, in the situation referred to in Question 1 and before the period to which the contributions in question relate, the person concerned had carried on a professional or trade activity even if it was of secondary importance, either as an employed person or as a self-employed person, in the territory of the Member State of residence.