

Judgment of the Court of 19 March 1964. - Mrs M.K.H. Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten (Administration of the Industrial Board for Retail Trades and Businesses). - Reference for a preliminary ruling: Centrale Raad van Beroep - Netherlands. - Case 75-63.

Parties

IN CASE 75/63

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

MRS M . K . H . UNGER, THE WIFE OF R . HOEKSTRA, BOTH RESIDING AT WOUSTRAAT 5, III AMSTERDAM, ASSISTED BY W . DE VALK, UTRECHT, APPELLANT,

AND

BESTUUR DER BEDRIJFSVERENIGING VOOR DETAILHANDEL EN AMBACHTEN OF NIJENOORD 1 A, UTRECHT, REPRESENTED BY ITS LEGAL ADVISER, R . H . VAN DER MEER, UTRECHT, RESPONDENT,

Subject of the case

ON THE FOLLOWING QUESTIONS :

' HOW SHOULD THIS TREATY AND THE MEASURES ADOPTED IN IMPLEMENTATION THEREOF, ESPECIALLY THE ABOVE REGULATION (THAT IS, REGULATION N . 3 OF THE COUNCIL CONCERNING SOCIAL SECURITY FOR MIGRANT WORKERS; OFFICIAL JOURNAL OF 16 DECEMBER 1958, PP . 561 ET SEQ .), AND IN PARTICULAR THE SAID PROVISION (THAT IS, ARTICLE 19 (1) OF REGULATION N . 3) BE INTERPRETED? AND IN PARTICULAR WHETHER THE CONCEPT OF WAGE - EARNER OR ASSIMILATED WORKER IS DEFINED BY BY THE LEGISLATION OF THE MEMBER STATES OR WHETHER

IT HAS A SUPRANATIONAL MEANING? IF SO, WHAT IS THAT MEANING, BECAUSE A DEFINITION OF THE TERM IS NECESSARY TO DECIDE WHETHER THE SAID ARTICLE 19 (1) PREVENTS THE NON-PAYMENT OF THE SICKNESS EXPENSES OF PERSONS WHO, ACCORDING TO THE FINDINGS OF THE NETHERLANDS COURT, ARE IN THE PARTICULAR SITUATION IN WHICH THE APPLICANT HAS BEEN FOUND TO BE? '

Grounds

A REFERENCE FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY HAS BEEN DULY MADE TO THE COURT BY THE CENTRALE RAAD VAN BEROEP .

1 . THE QUESTION PUT BY THAT COURT REQUESTS THE COURT OF JUSTICE TO RULE, IN THE FIRST PLACE, WHETHER THE CONCEPT OF A ' WAGE-EARNER OR

ASSIMILATED WORKER ' AS USED IN ARTICLE 19 (1) OF REGULATION N . 3 IS DEFINED BY THE LEGISLATION OF EACH MEMBER STATE OR BY COMMUNITY LAW AS HAVING A SUPRANATIONAL MEANING .

REGULATION N . 3 WAS ADOPTED IN APPLICATION OF ARTICLE 51 OF THE EEC TREATY, UNDER THE TERMS OF WHICH THE COUNCIL 'SHALL...ADOPT SUCH MEASURES IN THE FIELD OF SOCIAL SECURITY AS ARE NECESSARY TO PROVIDE FREEDOM OF MOVEMENT FOR WORKERS ', BY MAKING ARRANGEMENTS ' TO THIS END ' TO SECURE FOR THE PERSONS CONCERNED, AMONG OTHER ADVANTAGES, ' AGGREGATION, FOR THE PURPOSE OF ACQUIRING AND RETAINING THE RIGHT TO BENEFIT AND OF CALCULATING THE AMOUNT OF BENEFIT, OF ALL PERIODS TAKEN INTO ACCOUNT UNDER THE LAWS OF THE SEVERAL COUNTRIES ' .

THE REPLY TO THE QUESTION PUT THUS DEPENDS ESSENTIALLY UPON THE SCOPE, WHETHER COMMUNITY OR OTHERWISE, OF THE PROVISIONS OF THE TREATY FROM WHICH THE CONCEPT OF ' WAGE-EARNER OR ASSIMILATED WORKER ' IN SO FAR AS THEY AFFECT THE FIELD OF SOCIAL SECURITY, WAS DRAWN BY THE SAID REGULATION .

ARTICLE 51 IS INCLUDED IN THE CHAPTER ENTITLED ' WORKERS ' AND PLACED IN TITLE III (' FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL ') OF PART TWO OF THE TREATY (' FOUNDATIONS OF THE COMMUNITY ') .

THE ESTABLISHMENT OF AS COMPLETE A FREEDOM OF MOVEMENT FOR WORKERS AS POSSIBLE, WHICH THUS FORMS PART OF THE ' FOUNDATIONS ' OF THE COMMUNITY, THEREFORE CONSTITUTES THE PRINCIPAL OBJECTIVE OF ARTICLE 51 AND THEREBY CONDITIONS THE INTERPRETATION OF THE REGULATIONS ADOPTED IN IMPLEMENTATION OF THAT ARTICLE .

ARTICLES 48 TO 51 OF THE TREATY, BY THE VERY FACT OF ESTABLISHING FREEDOM OF MOVEMENT FOR ' WORKERS ', HAVE GIVEN COMMUNITY SCOPE TO THIS TERM .

IF THE DEFINITION OF THIS TERM WERE A MATTER WITHIN THE COMPETENCE OF NATIONAL LAW, IT WOULD THEREFORE BE POSSIBLE FOR EACH MEMBER STATE TO MODIFY THE MEANING OF THE CONCEPT OF ' MIGRANT WORKER ' AND TO ELIMINATE AT WILL THE PROTECTION AFFORDED BY THE TREATY TO CERTAIN CATEGORIES OF PERSON .

MOREOVER NOTHING IN ARTICLES 48 TO 51 OF THE TREATY LEADS TO THE CONCLUSION THAT THESE PROVISIONS HAVE LEFT THE DEFINITION OF THE TERM ' WORKER ' TO NATIONAL LEGISLATION .

ON THE CONTRARY, THE FACT THAT ARTICLE 48 (2) MENTIONS CERTAIN ELEMENTS OF THE CONCEPT OF ' WORKERS ', SUCH AS EMPLOYMENT AND REMUNERATION, SHOWS THAT THE TREATY ATTRIBUTES A COMMUNITY MEANING TO THAT CONCEPT .

ARTICLES 48 TO 51 WOULD THEREFORE BE DEPRIVED OF ALL EFFECT AND THE ABOVE-MENTIONED OBJECTIVES OF THE TREATY WOULD BE FRUSTRATED IF THE MEANING OF SUCH A TERM COULD BE UNILATERALLY FIXED AND MODIFIED BY NATIONAL LAW .

THE CONCEPT OF ' WORKERS ' IN THE SAID ARTICLES DOES NOT THEREFORE RELATE TO NATIONAL LAW, BUT TO COMMUNITY LAW .

THE EXPRESSION ' WAGE-EARNER OR ASSIMILATED WORKER ' USED BY REGULATION N . 3 HAS A MEANING ONLY WITHIN THE FRAMEWORK AND THE LIMITS OF THE CONCEPT OF ' WORKERS ' PROVIDED FOR IN THE TREATY TO THE APPLICATION OF WHICH THIS REGULATION IS LIMITED .

THE SAID EXPRESSION, WHICH IS INTENDED TO CLARIFY THE CONCEPT OF ' WORKERS ' FOR THE PURPOSES OF REGULATION N . 3, HAS THEREFORE, LIKE THAT CONCEPT, A COMMUNITY MEANING .

EVEN IF, FOR THE SAKE OF ARGUMENT, THE EXPRESSION ' WAGE-EARNER OR ASSIMILATED WORKER ' APPEARED IN THE LEGISLATION OF EACH OF THE MEMBER STATES, IT COULD NOT POSSIBLY HAVE A COMPARABLE MEANING AND ROLE, SO THAT IT IS IMPOSSIBLE TO ESTABLISH THE MEANING BY REFERENCE TO SIMILAR EXPRESSIONS WHICH MAY APPEAR IN NATIONAL LEGISLATION .

THE CONCEPT OF ' WAGE-EARNER OR ASSIMILATED WORKER ' HAS THUS A COMMUNITY MEANING, REFERRING TO ALL THOSE WHO, AS SUCH AND UNDER WHATEVER DESCRIPTION, ARE COVERED BY THE DIFFERENT NATIONAL SYSTEMS OF SOCIAL SECURITY .

2 . THE CENTRALE RAAD REQUESTS THE COURT, IN THE SECOND PART OF ITS QUESTION, AND IN THE EVENT THAT THE EXPRESSION IN DISPUTE SHOULD BE GIVEN A COMMUNITY MEANING, TO GIVE A RULING ON WHAT THAT MEANING IS, BECAUSE A DEFINITION OF THE TERM IS NECESSARY WHEN DECIDING WHETHER THE AFOREMENTIONED ARTICLE 19 (1) PREVENTS THE NON-PAYMENT OF SICKNESS EXPENSES TO PERSONS IN A SITUATION SIMILAR TO THAT IN THIS CASE .

IT FOLLOWS BOTH FROM THE TREATY AND FROM REGULATION N . 3, THAT THE PROTECTED ' WORKER ' IS NOT EXCLUSIVELY ONE WHO IS CURRENTLY EMPLOYED .

ARTICLE 48 (3) OF THE TREATY ALSO APPLIES TO PERSONS LIKELY ' TO REMAIN IN THE TERRITORY OF A MEMBER STATE AFTER HAVING BEEN EMPLOYED IN THAT STATE ...!.

ARTICLE 4 OF REGULATION N . 3 MENTIONS WAGE-EARNERS OR ASSIMILATED WORKERS WHO ARE ' OR HAVE BEEN ' SUBJECT TO THE LEGISLATION OF ONE OR MORE OF THE MEMBER STATES .

THE TREATY AND REGULATION N . 3 THUS DID NOT INTEND TO RESTRICT PROTECTION ONLY TO THE WORKER IN EMPLOYMENT BUT TEND LOGICALLY TO PROTECT ALSO THE WORKER WHO, HAVING LEFT HIS JOB, IS CAPABLE OF TAKING ANOTHER .

WHEN NATIONAL LAW OFFERS TO INDIVIDUALS WHO HAVE BEEN DEPRIVED OF THEIR EMPLOYMENT THE OPPORTUNITY TO ADHERE VOLUNTARILY TO THE SOCIAL SECURITY SYSTEM FOR WAGE-EARNERS AND SUCH ADHERENCE HAS BEEN PROFFERED AND ACCEPTED, THIS MEASURE CAN BE CONSIDERED IN CERTAIN CIRCUMSTANCES AS INTENDING TO PROTECT THE PERSONS CONCERNED IN THEIR CAPACITY AS ' WORKERS ' WITHIN THE MEANING OF THE TREATY AND TO CONFER ON THIS PROTECTION THE SAFEGUARDS OF REGULATION N . 3 .

THIS APPLIES IF THE ABOVEMENTIONED BENEFIT IS GRANTED TO THE PERSONS CONCERNED ON THE GROUNDS THAT THEY PREVIOUSLY POSSESSED THE STATUS OF ' WORKER ' AND THAT THEY ARE CAPABLE OF RE-ACQUIRING THAT STATUS . THEREFORE, SUCH PERSONS MAY BE CONSIDERED AS ' WAGE-EARNERS OR ASSIMILATED WORKERS ' WITHIN THE MEANING OF REGULATION N . 3, THERE BEING NO PROVISION OF THIS REGULATION CONFLICTING WITH THIS INTERPRETATION .

IT IS THEREFORE FOR THE NATIONAL COURT, WHICH WHICH ALONE IS COMPETENT TO INTERPRET NATIONAL LAW, TO APPRAISE WHETHER, IN EACH INSTANCE, THE OPPORTUNITY TO BELONG TO THE SOCIAL SECURITY SYSTEM HAS BEEN GIVEN TO THE PERSON CONCERNED BECAUSE HE HAS PREVIOUSLY HAD THE STATUS OF ' WORKER ' AND WHETHER THE AFFILIATION HAS BEEN

MAINTAINED IN CONSIDERATION OF A POSSIBLE RESUMPTION OF THAT WORK .

ANY ' WAGE-EARNER OR ASSIMILATED WORKER ' IN THE POSITION DESCRIBED IN THE AFORE - MENTIONED ARTICLE 19 (1) MAY CLAIM THE BENEFITS REFERRED TO THEREIN .

THIS PROVISION DOES NOT CONTAIN ANY EXCEPTION TO THE DETRIMENT OF THE PERSONS CONCERNED, IN PARTICULAR, AS REGARDS THE GROUND OF TEMPORARY RESIDENCE ABROAD . IT ALSO PRECLUDES ANY NATIONAL RULES FROM SUBJECTING THE GRANT OF THE BENEFITS IN QUESTION, IN THE EVENT OF SUCH RESIDENCE, TO MORE ONEROUS CONDITIONS THAN THOSE WHICH WOULD BE APPLIED IF THE PERSON HAD FALLEN ILL WHILE IN THE TERRITORY OF THE STATE TO WHICH THE INSURER BELONGS .

3 . THE GERMAN GOVERNMENT RAISED THE QUESTION WHETHER, IN ANY EVENT, THE GERMAN-DUTCH CONVENTION ON SOCIAL SECURITY OF 29 MARCH 1951 (TRACTATENBLAD VAN HET KONINKRIJK DER NEDERLANDEN, 1951, N . 57) SHOULD REQUIRE ACTIONS SUCH AS THAT BROUGHT BY THE APPELLANT TO BE UPHELD .

THE COURT IS NOT ENTITLED, WITHIN THE FRAMEWORK OF ARTICLE 177 OF THE EEC TREATY TO INTERPRET RULES PERTAINING TO NATIONAL LAW .

Decision on costs

4 . THE COSTS INCURRED BY THE COMMISSION OF THE EEC AND THE GERMAN GOVERNMENT ARE NOT RECOVERABLE .

AS THESE PROCEEDINGS ARE, IN SO FAR AS THE PARTIES TO THE MAIN ACTION ARE CONCERNED, A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT, THE DECISION ON 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 LETTER OF THE ACTING PRESIDENT OF THAT COURT OF 12 JULY 1963, HEREBY RULES :

1 . THE CONCEPT OF ' WAGE-EARNER OR ASSIMILATED WORKER ' EMPLOYED IN REGULATION N . 3 OF THE COUNCIL OF THE EEC CONCERNING SOCIAL SECURITY FOR MIGRANT WORKERS (OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES OF 16 DECEMBER 1958, PP . 561 ET SEQ .) HAS, LIKE THE TERM ' WORKERS ' IN ARTICLES 48 TO 51, A COMMUNITY MEANING .

2 . (A) THIS CONCEPT COVERS THOSE PERSONS WHO, ORIGINALLY COMPULSORILY AFFILIATED TO A SOCIAL SECURITY SYSTEM AS ' WORKERS ', HAVE SUBSEQUENTLY, AS SUCH AND IN CONSIDERATION OF A POSSIBLE RESUMPTION OF THEIR ACTIVITY AS WORKERS, BEEN ADMITTED AS BENEFICIARIES OF A VOLUNTARY INSURANCE SCHEME UNDER NATIONAL LAW GOVERNED BY PRINCIPLES ANALOGOUS TO THOSE OF THE COMPULSORY INSURANCE;

(B) IT IS FOR THE NATIONAL COURT TO APPRAISE IN EACH CASE WHETHER THIS BENEFIT HAS BEEN GRANTED TO THE PERSONS CONCERNED IN THE

CIRCUMSTANCE SET OUT UNDER (A).

3 . (A) ' WAGE-EARNERS OR ASSIMILATED WORKERS ' IN THE SITUATION ENVISAGED BY ARTICLE 19 (1) OF REGULATION N . 3 BENEFIT FROM THE RIGHTS CONFERRED BY THAT PROVISION, WHATEVER MAY BE THE REASON FOR THEIR TEMPORARY RESIDENCE ABROAD .

(B) ARTICLE 19 (1) PRECLUDES ANY RULE OF NATIONAL LAW FROM SUBJECTING THE GRANT OF THE BENEFITS IN QUESTION, IN THE CASE OF SUCH TEMPORARY RESIDENCE, TO CONDITIONS MORE ONEROUS THAN THOSE WHICH WOULD BE APPLIED IF THE PERSON CONCERNED HAD FALLEN ILL WHILE IN THE TERRITORY OF THE STATE TO WHICH THE INSURER BELONGS .

4 . IT IS FOR THE NATIONAL COURT TO DECIDE THE QUESTION OF THE COSTS OF THE PRESENT CASE .