OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 25 October 2001 [1]

I — Introduction

1. In this case, the Regeringsrätten (Supreme Administrative Court) (Sweden) has referred two questions for a preliminary ruling on the interpretation of Article 69(1)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as most recently amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001. [2]

II — Legal background

Community law

2. Article 69(1)(a) of Council Regulation (EEC) No 1408/71 provides that:

'1. An employed or self-employed person who is wholly unemployed and who satisfies the conditions of the legislation of a Member State for entitlement to benefits and who goes to one or more other Member States in order to seek employment there shall retain his entitlement to such benefits under the following conditions and within the following limits:

(a) Before his departure, he must have been registered as a person seeking work and have remained available to the employment services of the competent State for at least four weeks after becoming unemployed. However, the competent services or institutions may authorise his departure before such time has expired.'

3. Furthermore, Article 83(1) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as most recently amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, [3]

1 — Original language: Dutch.

2 — OJ 2001 L 187, p. 1.

3 — OJ 2001 L 187, p. 1.

provides that, in order to retain the right to benefits, an unemployed person is required to submit to the institution of the place to which he has gone a certified statement (certificate E 303) certifying that he is entitled to benefits. The unemployed person must, prior to departure, apply for this certificate to the competent institution of the State in which he is unemployed.

National law

4. According to the Swedish Law on Unemployment Benefit, unemployment benefits are payable to a person who is unemployed and who has previously worked for a certain period. These benefits in respect of shortfall in income are awarded in the form of a daily allowance. A precondition for benefits is that the unemployed person is fit for work, not prevented from accepting work and prepared to accept any appropriate work offered.

5. According to the Swedish Law on Social Insurance, a parent is entitled to receive temporary parents' benefit if the parent is obliged to suspend gainful employment by reason, *inter alia*, of caring for a sick child. In practice, the question as to whether persons who are unemployed can also receive temporary parents' benefit has never been clearly settled. According to recommendations by the Swedish Social Security Administration, a day on which a parent can show that he loses unemployment benefit for reasons which entitle him to temporary parents' benefit should be treated as a day on which the parent was unable to pursue gainful employment.

6. Under Article 20 of the Law on Unemployment Benefit, no daily allowance can be awarded for a period during which the person concerned receives parents' benefit.

III — Facts of the case and the course of proceedings

7. Ms Rydergård was registered as unemployed with the employment services with effect from 25 September 1998 inclusive and received unemployment benefit under the Swedish Law on Unemployment Benefit. She applied for certificate E 303 and stated that she intended to travel to France on 27 October 1998 in order to look for work there. The Arbetsmarknadsstyrelse (the National Labour Directorate) (hereinafter: 'the AMS'), which issues such certificates, learned that she had received temporary parents' benefit for care of a sick

child on 28, 29 and 30 September and on 12 and 13 October, that is to say, for a total of five days during the period when she was registered as unemployed.

8. The AMS rejected Ms Rydergård's application for certificate E 303 on the ground that she had not been entitled to unemployment benefit for at least four weeks immediately preceding the planned day of departure.

9. Ms Rydergård challenged that negative decision of the AMS before the Länsrätt (District Administrative Court). The Länsrätt held that an unemployed person who cares for a sick child for a certain time does not cease on that ground to be available for placement in employment and that there was no reason to refuse to issue the certified statement for which Ms Rydergård had applied. The Länsrätt found for the applicant and ordered the AMS to issue the certificate requested.

10. The AMS appealed against this judgment to the Kammarrätt (Administrative Court of Appeal), but this appeal was dismissed. The AMS then brought a further appeal before the Regeringsrätten.

11. The Regeringsrätten states in its order for reference that the right to benefits — and the right to receive a certified statement — presuppose, according to the relevant EC rules, that the unemployed person has remained available to the employment services for at least four weeks. According to the AMS, this means that the unemployed person must have been entitled to unemployment benefit, without interruption, during the four weeks preceding his departure. The referring court, however, notes that other interpretations are possible.

12. As a result, the Regeringsrätten has referred two questions to the Court for a preliminary ruling.

IV — The questions

13. In its order of 3 May 2000, which was received at the Court Registry on 31 May 2000, the Regeringsrätten referred the following questions for a preliminary ruling:

'1. Can a person in the situation of Petra Rydergård be regarded as having been available to the employment services, within the meaning of Article 69(1) of Council Regulation (EEC) No 1408/71, for the days in a period of unemploy-

ment on which she was prevented from pursuing gainful employment because she was caring for a sick child, and does the assessment depend on the content of national legislation?

2. Does Article 69(1) [of Regulation No 1408/71] require that a person seeking work must have been available to the employment services for an uninterrupted period of four weeks immediately preceding his departure to another Member State?'

V — Appraisal

Observations of the parties

14. The AMS, the Austrian Government and the Commission have made representations in the proceedings.

15. The AMS's observations correspond to the case which it presented when appealing during the course of the substantive proceedings. According to the AMS, the conditions laid down in Article 69(1) of Regulation No 1408/71 should be interpreted as meaning that a jobseeker who wants to retain benefits for three months while seeking work abroad must have remained available to the Swedish labour market for a continuous period of at least four weeks immediately prior to the intended date of departure. The person concerned must, therefore, have received a decision from his unemployment benefit fund that he was entitled to unemployment benefit for the four continuous weeks.

16. The AMS maintains that there must have been no interruption of the right to receive benefit. It is of the opinion that the conditions in Regulation No 1408/71 have been laid down in order to enable the competent authorities to check that the person concerned is really available to the labour market and is seeking work, and in order to ensure that the advantage of receiving the E 303 certificate is available only to those who are wholly unemployed, are seeking work and are entitled to benefit. The tests of national legislation must be applied in order to establish whether a jobseeker who wishes to retain the right to benefits for three months was available to the employment services for at least four weeks before the date of departure and fulfilled the conditions for entitlement to unemployment benefits for the same period. For a person to establish that he is wholly unemployed in Sweden he must, besides being registered with the employment services, declare on his benefit payment card that he has been wholly

without work over the same period. The question whether a person is unemployed may be resolved only in accordance with the legislation of the country awarding him unemployment benefits.

17. The AMS also argues that a person who receives temporary parents' benefit for the care of a sick child is not available to the employment services, within the meaning of Article 69(1). According to the Swedish Law on Social Insurance (Chapter 4, Article 10, of the Lag om Allmän Försäkring (1962:381)), a parent has a right to temporary parents' benefit for the care of a sick child if the parent is obliged to suspend gainful employment by reason, *inter alia,* of the sickness of the child or the risk of contagion. During the period for which Ms Rydergård received parents' benefit, she was, according to the AMS, prevented from accepting work immediately and could not, therefore, be regarded as being available to the employment services, nor did she have a right to unemployment benefit. This is why, in the opinion of the AMS, the period laid down in Article 69(1) must be regarded as having been interrupted. The period of at least four weeks can, according to the AMS, be calculated only from the first day of unemployment after the period covered by temporary parents' benefit, that is, from 14 October 1998 inclusive.

18. The Austrian Government takes the same view as the AMS.

19. By contrast, the Commission considers that the conditions laid down in Article 69(1)(a) of Regulation No 1408/71 must be interpreted uniformly and should not depend on the content of national law. The Commission takes the view that caring for a sick child for two periods, of three and two days respectively, does not affect an unemployed person's availability on the labour market.

The first question

20. In its first question, the referring court is asking whether Ms Rydergård was available to the employment services throughout the period of unemployment prior to her intended date of departure, during which she cared for a sick child for a total of five days.

21. According to settled case-law of the Court, any interpretation of a provision of Community law must take into account not only its wording but also its context and the objectives of the legislation of which it forms a part.

22. Therefore, before answering this question, it will be useful to reiterate the objectives of Regulation No 1408/71 and, in particular, of Article 69.

23. Regulation No 1408/71 seeks to give effect to Article 51 of the EC Treaty (now, after amendment, Article 42 EC) and to facilitate freedom of movement for workers. The possibility for an unemployed person to seek work elsewhere in the Community forms part of that objective. This possibility is provided for by Article 69 of Regulation No 1408/71. First, this provision governs the continued right to benefits and, second, it frees the jobseeker, for a certain period, from his obligation to be available to the employment services in his country. In so doing, the provision allows him to seek work more easily elsewhere in the Community. This possibility of seeking work in another Member State is, however, subject to two conditions. Thus, the Community legislature requires that, before his departure, the unemployed person must (1) have been registered as seeking work for at least four weeks after becoming unemployed and (2) have remained available to the competent employment services during that period.

24. The referring court wishes to know whether these conditions must be interpreted in the light of the national legislation applicable to the worker concerned or whether they must, as part of a provision of Community law, be given a uniform interpretation and application independent of national legislation.

25. Article 69(1) of Regulation No 1408/71 provides that the unemployed person concerned must satisfy 'the conditions of the legislation of a Member State for entitlement to benefits'. The Community legislature then makes the possibility of exporting entitlement to benefits subject to the two conditions mentioned in point 23.

26. It is clear from the wording of Article 69(1) of Regulation No 1408/71 that the question of the existence of entitlement to benefits is within the purview of national law. Therefore, it is effectively for the national legislature to determine the conditions under which a person can receive unemployment or other benefits within national territory.

27. On the other hand, the conditions which must be fulfilled in order to be able to exercise the right in Article 69(1) are a matter for the Community legislature. This provision is intended to make it possible for a worker who has become unemployed to seek work in another Member State. National law cannot present any obstacle to the achievement of this objective.

The rights which jobseekers may derive from Article 69(1) of Regulation No 1408/71 cannot vary depending on the Member States in which they become unemployed.

28. In this regard, it should be borne in mind that, as the Court stated in its judgment in *Testa*,[4] Article 69 is not simply a measure to coordinate national laws, but also establishes an independent body of rules in favour of workers claiming the benefit thereof which constitute an exception to national legal rules and must be interpreted uniformly in all the Member States.

29. I am therefore of the opinion that the question whether Ms Rydergård satisfies the conditions laid down in Article 69(1)(a) of Regulation No 1408/71 must be settled regardless of Swedish legislation. Any other interpretation would deflect the provision from its objective, since it would make the possibility of seeking work elsewhere in the Community dependent on rules of national law, which may vary considerably in their content and scope.

30. It is common ground that Ms Rydergård was wholly unemployed and satisfied the conditions for receipt of unemployment benefits. The nature and amount of benefits are, under Article 69(1) of Regulation No 1408/71, governed entirely by the applicable national laws. As the Commission has rightly noted, the nature of the benefit received by an unemployed person has no bearing on the question whether that person has satisfied the two conditions which make it possible to seek work in another Member State.

31. It is also established that Ms Rydergård was registered as a jobseeker and remained available to the employment services for at least four weeks. The fact that she cared for her sick child for five days during this period and that therefore, under Swedish law, she was entitled to receive only temporary parents' benefits instead of unemployment benefits cannot be used in argument to conclude that she was not available to the employment services. An interpretation to the contrary would prevent unemployed people who are actively seeking work, but whose family or personal circumstances in fact prevent them, for a short period, from working, from being able to exercise the rights afforded them by Article 69(1) of Regulation No 1408/71. In my opinion, such a consequence is incompatible with the purpose of that provision.

The second question

32. In its second question, the referring court asks whether the condition of remaining available to the employment services must be satisfied for an uninterrupted period of four weeks immediately prior to departure.

4 — Joined Cases 41/79, 121/79 and 796/79 *Testa, Maggio and Vitale* v *Bundesanstalt für Arbeit* [1980] ECR 1979.

33. It is already self-evident from the answer to the first question that the rights conferred on jobseekers by Article 69(1) of Regulation No 1408/71 can in no case be restricted by the interpretation placed on them, in light of national legislation, by the competent national authorities.

34. Under Article 69(1)(a) of Regulation No 1408/71, the unemployed person registered as a person seeking work must have remained available to the employment services for at least four weeks after becoming unemployed. It is not apparent from the wording of that article that the period in question must be an uninterrupted period of four weeks immediately prior to departure. Therefore, as the Commission has also pointed out, a national legislature or authority cannot decide that the period of four weeks laid down in Article 69(1)(a) has been interrupted by virtue of the fact that a registered jobseeker is required to care for a sick child for a short time and, because of this, is in fact prevented from working. In so far as such an interruption would effectively prolong the period of four weeks laid down as a condition by the Community legislature, the rights conferred on jobseekers by Article 69(1) of Regulation No 1408/71 would be restricted. I would further point out in this regard that the period of four weeks laid down by the Community legislature, and which guarantees legal certainty to the individual, could be seriously undermined if restrictions resulting from national law could be attached to that period. The legal uniformity and legal certainty sought by the Community legislature would thereby be adversely affected.

VI — Conclusion

35. Having regard to the above, I propose that the Court reply as follows to the questions referred by the Regeringsrätten for a preliminary ruling:

(1) Article 69(1)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the

Community must, as a provision of Community law capable of conferring rights on persons seeking work, be interpreted and applied uniformly, regardless of the national legislation applicable to the persons concerned. It follows from the wording and scope of Article 69(1)(a) of Regulation No 1408/71 that a person seeking work must be regarded as having remained available to the employment services in the case where he was prevented from working by the need to care for a sick child for a limited time during the period of four weeks after becoming unemployed.

(2) That provision must therefore be interpreted as meaning that the period of at least four weeks which it lays down is not interrupted by virtue of the fact that the person seeking work was not in a position to work for a short time over that period during which he had to care for a sick child.