JUDGMENT OF THE COURT (Third Chamber)

13 June 1996 *

In Case C-170/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Belgian Cour de Cassation for a preliminary ruling in the proceedings pending before that court between

Office National de l'Emploi

and

Calogero Spataro,

on the interpretation of Article 69(4) 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 amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6),

* Language of the case: French.

THE COURT (Third Chamber),

composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida and C. Gulmann, Judges,

Advocate General: C. O. Lenz,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Office National de l'Emploi, by Georges Lewalle, of the Liège Bar,

— the Belgian Government, by Jan Devadder, Director of Administration at the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent,

— the French Government, by Catherine de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Claude Chavance, Foreign Affairs Secretary in the same Directorate, acting as Agents,

— the Commission of the European Communities, by Maria Patakia, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Office National de l'Emploi, represented by Georges Lewalle, the Belgian Government, represented by Jan Devadder, the

French Government, represented by Claude Chavance, and the Commission, represented by Maria Patakia, at the hearing on 7 March 1996,

after hearing the Opinion of the Advocate General at the sitting on 25 April 1996,

gives the following

Judgment

1 By judgment of 15 May 1995, received at the Court on 6 June 1995, the Belgian Cour de Cassation (Court of Cassation) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 69(4) 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 amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6, hereinafter 'the Regulation').

2 That question was raised in proceedings between the Office National de l'Emploi (National Employment Office) and Mr Spataro concerning payment of unemployment benefit.

3 In July 1985 Mr Spataro, who at the time was unemployed and receiving benefit, left Belgium to seek employment in Italy. Pursuant to Article 69(1) of the Regulation he retained his entitlement to Belgian unemployment benefits for a period of three months.

4 As he had not found employment in Italy, he returned, after expiry of that three-month period, to live in Belgium, where he found work at the beginning of 1986. However, a few weeks later he became unemployed again and applied for unemployment benefit. The Office National de l'Emploi rejected his application on the ground that he had not worked in Belgium again for three months as required by Article 69(4) of the Regulation. It also considered that he had not completed the qualifying period laid down by Belgian law (Article 118 et seq. of the Royal Decree of 20 December 1963 on Employment and Unemployment, hereinafter 'the Royal Decree').

5 Mr Spataro successfully challenged that decision in an action before the Tribunal du Travail (Labour Court), Liège (Belgium). On appeal the Cour du Travail (Higher Labour Court), Liège upheld the judgment of the Tribunal du Travail, holding in particular that while Article 69(4) of the Regulation provides that an unemployed person who returns to Belgium does not requalify for benefits in that State until he has been employed there again for three months, it does not make fresh acquisition of the right to benefits dependent on that condition. The Cour du Travail found that Mr Spataro had carried out more than 450 days of work or days to be treated as such in the 27 months preceding his benefit application, thereby completing the qualifying period for acquisition of entitlement to benefits prescribed by the Royal Decree.

6 The Office National de l'Emploi then appealed on a point of law to the Cour de Cassation, which decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 69(4) 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, in the version contained in Regulation (EEC) No 2001/83 of 2 June 1983, be interpreted as meaning that the requirement that an unemployed person must have been employed for at least three months after returning to Belgium is applicable where

the unemployed person does not rely on Article 123 of the Royal Decree of 20 December 1963 to claim that he has preserved his entitlement to unemployment benefits but where he demonstrates that, on the date of his application, he satisfied the conditions setting qualifying periods for acquisition of entitlement to those benefits?'

7 It should be pointed out at the outset that Article 69 of the Regulation allows for an unemployed worker to be exempt for a set period from the obligation imposed by the law of the competent Member State to make himself available to the employment services of that State without thereby losing his entitlement to unemployment benefits in order to enable him to seek employment in another Member State. According to Article 69(1)(c) the possibility thus afforded to the worker is limited to a period of three months from the date on which he ceased to be available to the employment services of the competent State.

8 In Joined Cases 41/79, 121/79 and 796/79 *Testa* v *Bundesanstalt für Arbeit* [1980] ECR 1979, the Court held that a worker who returns to the competent State after the three-month period has expired may no longer claim entitlement, by virtue of Article 69(2), to benefits as against the competent State unless the said period is extended pursuant to that provision.

9 Article 69(4), the interpretation of which is requested by the national court, is a special provision applicable to requalification for benefits in the case of an unemployed person who returns to Belgium after the three-month period has expired. It provides that to requalify a worker must have been employed in that country for at least three months after returning there.

10 In Case C-163/89 *Di Conti* [1990] ECR I-1829, the Court held that Article 69(4) could not be interpreted without regard to the particular nature of the Belgian

legislation, in particular Article 123 of the Royal Decree under which a worker who has become unemployed retains his status as a person entitled to unemployment benefit if the benefit has been interrupted for a period of less than three years. It therefore ruled that an unemployed person who returns to Belgium after the expiry of the period of three months laid down in Article 69(1)(c) requalifies for benefits under the Belgian unemployment benefit scheme on condition only that he has retained the status of an entitled person under Belgian legislation and that he has been employed for at least three months since his return to Belgium.

11 The question referred for a preliminary ruling is whether the latter condition, imposed by Article 69(4) of the Regulation, also applies where the unemployed person does not claim that he has preserved his entitlement to unemployment benefits under Belgian law (Article 123 of the Royal Decree) but on the date of his application satisfies the conditions laid down by Belgian law (Article 118 of the Royal Decree) for acquisition of such an entitlement.

12 The Office National de l'Emploi and the Belgian Government put forward an answer in the affirmative. They contend in substance that Article 69(4) would be devoid of meaning if the express requirement to work again for at least three months after returning to Belgium did not apply in circumstances such as those set out by the Cour de Cassation.

13 The French Government and the Commission, on the other hand, put forward the opposite answer. They maintain in particular that the provision at issue, which applies solely to requalification of an unemployed person for benefits on his return to Belgium, cannot make it more difficult for a migrant worker to acquire entitlement to benefits than a worker subject only to Belgian law.

14 The second proposition must be accepted.

15 First, as the Court noted in *Di Conti*, at paragraph 12, Article 69(4) of the Regulation merely requires that an unemployed person who returns to Belgium must be employed there again for three months in order to requalify for benefits; it thus concerns requalification for benefits and not acquisition of entitlement thereto. Moreover, that provision was not concerned with conditions for acquisition of entitlement to unemployment benefits under Belgian law, but was enacted in return for unemployed persons being able under Belgian law to retain their right to benefits for quite a long period while not remaining available to the Belgian employment services (paragraph 16 of *Di Conti*).

16 Secondly, while a migrant worker loses his entitlement to unemployment benefits under the law of the competent State if he does not return there before the three-month period has expired, as pointed out in paragraph 7 of this judgment, that does not mean that he cannot acquire that entitlement anew in accordance with the conditions that normally apply under the law of that State. If that were not so, he would be in a less favourable position than if he had not claimed the benefit of Article 69 of the Regulation. The effect of the interpretation advanced by the Office National de l'Emploi and the Belgian Government would be to discourage the mobility of persons seeking employment that Article 69 seeks to promote, by making it more difficult for a worker who has exercised the right given to him by Article 69 to be entitled to unemployment benefit than for workers in Belgium as a whole (paragraph 13 of *Di Conti*).

17 The answer to the question submitted for a preliminary ruling should therefore be that Article 69(4) of the Regulation applies not to an unemployed person's acquisition of entitlement to benefits, but to his requalification for benefits, when he returns to Belgium after the three-month period prescribed by Article 69(1)(c) has expired. Article 69(4) does not permit entitlement to benefits to be denied to unemployed persons who, on the date of their application for benefits, fulfil the conditions imposed by Belgian law for acquisition of such entitlement.

Costs

18 The costs incurred by the Belgian and French Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Belgian Cour de Cassation, by judgment of 15 May 1995, hereby rules:

Article 69(4) 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 amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, applies not to an unemployed person's acquisition of entitlement to benefits, but to his requalification for benefits, when he returns to Belgium after the three-month period prescribed by Article 69(1)(c) has expired. Article 69(4) does not permit entitlement to benefits to be denied to unemployed persons who, on the date of their application for benefits, fulfil the conditions imposed by Belgian law for acquisition of such entitlement.

Puissochet Moitinho de Almeida Gulmann

Delivered in open court in Luxembourg on 13 June 1996.

R. Grass

Registrar

J.-P. Puissochet

President of the Third Chamber