JUDGMENT OF THE COURT (First Chamber)
20 June 1985 *

In Case 94/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour du travail [Labour Court], Liège, for a preliminary ruling in the action pending before that court between

Office national de l'emploi

and

Joszef Deak

on the interpretation of certain provisions 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 (Official Journal, English Special Edition 1971 (II), p. 416),

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, T. Koopmans and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

after considering the observations submitted on behalf of:

— the Office national de l'emploi, plaintiff in the main proceedings, by G. Lewalle, of the Liège Bar,

— Joszef Deak, defendant in the main proceedings, by Mr André, of the Liège Bar,

— the Commission of the European Communities, by its Legal Adviser, Joseph Griesmar,

after hearing the Opinion of the Advocate General delivered at the sitting on 7 March 1985,

* Language of the Case: French.

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By a judgment of 27 March 1984, received at the Court on 5 April 1984, the Cour du travail [Labour Court], Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of several provisions 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 (Official Journal, English Special Edition 1971 (II), p. 416).

2 Those questions arose in the course of proceedings brought against the refusal of the Office national de l'emploi [National Employment Office] to grant Mr Deak the special unemployment benefits provided by Belgian legislation for young workers who are unable to find employment after completing their studies or finishing their apprenticeships.

3 Mr Deak is a Hungarian national living in Belgium with his mother, who is an Italian national and works as an employed person in Belgium.

4 The refusal to grant Mr Deak the special unemployment benefits was based on his Hungarian nationality, since the applicable Belgian legislation provides that those benefits should be granted to foreign workers and stateless persons only 'in so far as is provided in an international convention'. There is no convention between Hungary and Belgium on the matter.

5 Mr Deak brought proceedings before the Belgian labour courts against the decision refusing to grant him the benefit. Before the Tribunal du travail [Labour Tribunal], Liège, he was successful; that court considered that under Article 3 (1)

in conjunction with Article 2 (1) of Regulation No 1408/71 Mr Deak was entitled to the advantages provided for under the legislation of the State in which he resided on the same basis as the nationals of that State, in view of the fact that he was a member of the family of a worker who was a national of another Member State.

6 The Office national de l'emploi appealed to the Cour du travail, Liège. That court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty:

'I. Does Article 2 (1) of Regulation (EEC) No 1408/71 mean that the Belgian laws on unemployment are applicable to a person who is not a national of a Member State merely by reason of the fact that his mother is a national of a Member State, by virtue of the words "as also to the members of their families' appearing in Article 2 (1) of the said regulation?

II. In the event of the Belgian laws on unemployment being applicable, by virtue of Article 2 (1) of the said regulation, to a person who is not a national of a Member State, is Article 124 of the Belgian Royal Decree of 20 December 1963 on unemployment, which provides for an unemployment benefit for former students who have not yet found work, applicable to that person by virtue of the equality of treatment provided for in Article 3 (1) of the said Regulation No 1408/71, even though Article 67 of that regulation apparently does not provide for any such unemployment benefit without an insurance period or period of employment?'

7 Article 2 (1) of Regulation No 1408/71, to which the Cour du travail refers, is worded as follows:

'This regulation shall apply to workers who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as also to the members of their families and their survivors.'

8 Inasmuch as they are members of the class of persons to whom Regulation No 1408/71 applies, under Article 3 (1) of the regulation the members of the family of a worker who is a national of a Member State are entitled, subject to the special

provisions of the regulation, to 'enjoy the same benefits under the legislation of any Member State as the nationals of that State'.

9 In order to reply to the national court's first question it is first necessary to identify the benefits to which the members of the family of a worker who is a national of a Member State are entitled under Regulation No 1408/71.

10 In that regard the Office national de l'emploi and the Commission, which have submitted written observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, have referred to the judgment of the Court of 23 November 1976 in Case 40/76 *Kermaschek* v *Bundesanstalt für Arbeit* [1976] ECR 1669.

11 According to the Commission, that judgment makes a clear distinction between workers on the one hand, and the members of their families and their survivors on the other. Whereas persons belonging to the first category can claim the rights to benefits covered by Regulation No 1408/71 as rights of their own, persons belonging to the second category can only claim derived rights, acquired through their status as a member of the family or a survivor of a worker, that is to say of a person belonging to the first category.

12 In this case, says the Commission, the benefit claimed by Mr Deak is not a benefit to which he is entitled as a member of the family of an unemployed migrant worker, in so far as that benefit is not a right derived from his mother's status as a migrant worker. The Commission points out that the special unemployment benefits provided for by Belgian legislation are granted to young persons seeking employment in their own right, and not because they are 'members of the family' of a worker. It therefore submits that the answer to the national court's first question should be in the negative.

13 In substance the Office national de l'emploi shares the point of view expressed by the Commission with regard to the interpretation of Regulation No 1408/71.

14 It should be noted that, as is clear from the judgment of 23 November 1976 referred to above, with particular regard to unemployment benefits, whatever their nationality the members of the family of a migrant worker who is a national of a

Member State are entitled only to the benefits provided by the legislation of the Member States for the members of the families of unemployed workers.

15 The special unemployment benefits referred to by the national court are benefits made available to young persons seeking work on the basis of their own situation and not by reason of the fact that they are members of a worker's family.

16 It follows that a national of a non-member country who is a member of the family of a worker who is a national of a Member State cannot rely on Regulation No 1408/71, and in particular Article 2 (1) and Article 3 (1) thereof, in order to claim unemployment benefits granted, under the legislation of the Member State in whose territory that worker is employed, to young persons seeking employment.

17 Consequently there is no need to reply to the national court's second question, since it was put only in the event that the Court should give an affirmative answer to the first question.

18 However, in order to provide the national court with all the elements of interpretation of Community law relevant to the case before it, it is necessary to consider a further question raised during the proceedings, concerning the interpretation of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 475).

19 In that regard the Commission argues that the unemployment benefits referred to by the Cour du travail constitute a social advantage within the meaning of the said Article 7 (2) and that they must therefore be granted to the children of a worker who is a national of a Member State, whatever the nationality of those children. Mr Deak, who has presented only oral argument in these proceedings, has made a similar submission. The Office national de l'emploi has stated that it has no submission to make on this point.

20 It must be observed that according to Article 7 (2) of Regulation No 1612/68 a worker who is a national of a Member State is entitled, in the territory of another Member State, to the 'same social and tax advantages as national workers'.

21 As the Court has held on a number of occasions (most recently, in its judgment of 27 March 1985 in Case 249/83 *Hoeckx* v *Openbaar Centrum voor Maatschappelijk Welzijn* [1985] ECR 973), the term 'social advantage' used in Article 7 (2) of Regulation No 1612/68 refers to all advantages 'which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community'.

22 As is clear from the judgments of the Court of 30 September 1975 in Case 32/75 (*Cristini* v *SNCF* [1975] ECR 1085) and 16 December 1976 in Case 63/76 (*Inzirillo* v *Caisse d'allocations familiales Lyon* [1976] ECR 2057), the principle of equal treatment laid down in Article 7 of Regulation No 1612/68 is also intended to prevent discrimination against descendants of a worker who are dependent on him.

23 A worker anxious to ensure for his children the enjoyment of the social benefits provided for by the legislation of the Member States for the support of young persons seeking employment would be induced not to remain in the Member State where he had established himself and found employment if that State could refuse to pay the benefits in question to his children because of their foreign nationality. As was pointed out in the judgment of 16 December 1976 referred to above, that result would run counter to the objective of the principle of freedom of movement for workers within the Community, bearing in mind *inter alia* the right granted under that principle to employed persons and to members of their families to remain within the territory of a Member State in which the employed person was employed under the conditions determined by Regulation No 1251/70 of the Commission of 29 June 1970 (Official Journal, English Special Edition 1970 (II), p. 402).

24 It must consequently be held that under Article 7 of Regulation No 1612/68 a Member State cannot refuse to grant the dependent children of a worker who is a national of another Member State the benefits provided under its legislation for young persons seeking work, on the grounds that those children are nationals of another State.

25 That conclusion is not altered by the fact that the child in question is a national not of a Member State but of a non-member country, as in the case before the national court.

26 As the Commission has correctly pointed out, the principle of equal treatment laid down in Article 7 of Regulation No 1612/68 for workers who are nationals of a Member State and, indirectly, for members of their families applies without regard to the nationality of those family members. That is expressly confirmed by the wording of Article 11 of that regulation, which provides that the spouse of a national of a Member State who is pursuing an activity as an employed or self-employed person in the territory of another Member State and those of his children who are under the age of 21 years or who are dependent on him have the right to take up any activity as an employed person throughout the territory of that same State, 'even if they are not nationals of any Member State'.

27 The answer to the national court's questions must therefore be that a national of a non-member country who is a member of the family of a worker who is a national of a Member State cannot rely on Regulation No 1408/71, and in particular Article 2 (1) and Article 3 (1) thereof, in order to claim unemployment benefits granted, under the legislation of the Member State in whose territory the worker is employed, to young persons seeking employment, but that such benefits do constitute a social advantage as referred to in Article 7 (2) of Regulation No 1612/68.

Costs

28 The costs incurred by the Commission, which has 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 before the national court, costs are a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions submitted to it by the Cour du travail, Liège, by judgment of 27 March 1984, hereby rules:

A national of a non-member country who is a member of the family of a worker who is a national of a Member State cannot rely on Regulation No 1408/71, and in particular Article 2 (1) and Article 3 (1) thereof, in order to claim unemployment benefits granted, under the legislation of the Member State in whose territory the worker is employed, to young persons seeking employment. Such benefits do however constitute a social advantage as referred to in Article 7 (2) of Regulation No 1612/68.

Bosco Koopmans Joliet

Delivered in open court in Luxembourg on 20 June 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber