JUDGMENT OF THE COURT (FIRST CHAMBER)
11 OCTOBER 1984 [1]

Caisse Primaire d'Assurance Maladie de Rouen v A. Guyot (reference for a preliminary ruling from the Cour d'Appel, Rouen)

(Unemployed migrants — Entitlement to sickness benefits)

Case 128/83

Social security for migrant workers — Unemployment — Unemployed person having resided, during his last employment, in the Member State in which he was employed — Application of Article 71 of Regulation No 1408/71 — Article 71 not applicable
(Regulation No 1408/71 of the Council, Art. 71)

Article 71 of Regulation No 1408/71 of the Council of 14 June 1971 does not apply to an unemployed person who, during his last employment, was residing in the Member State in which he was employed.

In Case 128/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel [Court of Appeal], Rouen, for a preliminary ruling in the proceedings pending before that court between

CAISSE PRIMAIRE D'ASSURANCE MALADIE DE ROUEN

and

A. GUYOT

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

1 — Language of the Case: French.

persons and their families moving within the Community (Official Journal, English Special Edition, 1971 (II), p. 416),

THE COURT (First Chamber)

composed of: Lord Mackenzie Stuart, President, G. Bosco (President of Chamber) and T. Koopmans, Judge,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

Article 25 of Regulation No 1408/71 gives unemployed persons who move within the Community some rights to sickness benefits. Those rights depend upon the worker's entitlement to unemployment benefits governed by Articles 69 and 71 of that regulation. Article 69 governs the situation of an unemployed person who goes to a Member State other than the competent State. He retains the right to benefits granted by the competent State for three months, provided he has completed certain formalities. After that period, he must return to the competent State in order to safeguard his rights.

Article 71 governs the situation of an unemployed person who, during his last employment, was residing in a Member State other than the competent State. According to Article 71 (1) (b) (ii) a worker, other than a frontier worker, who is wholly unemployed and who makes himself available for work to the employment services in the territory of the Member State in which he resides, or who returns to that territory, is to receive benefits in accordance with the legislation of that State as if he had last been employed there.

The position of the respondent in the main action

The respondent in the main action, of German nationality, resigned from her employment in the Federal Republic of Germany on 30 June 1977. On 1 August

1977 she registered with the German employment authorities as seeking employment. She went to France in September 1977 to rejoin her husband, settled permanently there, and on 5 September 1977 registered with the Agence Nationale pour l'Emploi [National Employment Agency] as seeking employment. For three months she received German unemployment benefits and subsequently she received unemployment benefit from the Association pour l'Emploi dans les Industries et le Commerce [Association for Employment in Industry and Commerce].

In 1978, the Caisse Primaire d'Assurance Maladie [Local Sickness Insurance Fund, hereinafter referred to as "the Fund"] refused to reimburse her for medical expenses (sickness benefits in kind) incurred between January and March 1978 or to pay her daily allowances in respect of incapacity for work.

Procedure

On 28 April 1981, the Commission de Première Instance de Sécurité Sociale [Social Security Board of First Instance], Rouen, ordered the Fund to pay the disputed benefits. The Fund appealed to the Cour d'Appel, Rouen. That court took the view that interpretation of Regulation No 1408/71 was required and therefore suspended the proceedings and submitted the following question to the Court of Justice:

"In the case envisaged by Article 71 (1) (b) (ii) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971, is residence in the competent State prior to the end of the period of last employment in the Member State other than the competent State one of the conditions for obtaining the benefits referred to in Article 71?"

Written observations were submitted pursuant to Article 20 of the Statute of the Court of Justice by the Directeur Régional des Affaires Sanitaires et Sociales de Haute-Normandie [Regional Director for Health and Social Matters for Upper Normandy] and by the Commission, represented by J. Griesmar, a member of its Legal Department, acting as Agent, assisted by F. Herbert, of the Brussels Bar.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry and to assign the case to the First Chamber.

II — Written observations submitted to the Court

The *Direction Régionale des Affaires Sanitaires et Sociales de Haute-Normandie* submits that paragraph 1 of Article 71 refers to unemployed persons who, during their last employment, were residing in the territory of a Member State other than the competent State. In the present case, Mrs Guyot's last employment was in Germany until 30 June 1977. On that date and until September 1977, she lived in German territory. Germany is therefore both the State of residence during the period of the last employment, and the State of the competent institution since Mrs Guyot registered as unemployed in her country of origin from 1 August 1977. The Direction Régionale submits that those factors alone suffice to show that Mrs Guyot does not fulfil the conditions set out in Article 71 (1) (b) (ii) but that she falls within the exception laid down by that article in the following terms:

"However, if such worker has become entitled to benefits at the expense of the competent institution of the Member State to whose legislation he was last subject [in the present case Germany], he shall receive benefits under the provisions of Article 69" of Regulation No 1408/71.

The *Commission* examines the scope of Articles 69 and 71 in the light of the judgments of the Court of Justice on the subject: judgment of 10 July 1975 in Case 27/75 *Bonaffini and Others* v *Istituto Nationale della Previdenza Sociale* [1975] ECR 971; judgment of 23 November 1976 in Case 40/76 *Kermaschek* v *Bundesanstalt für Arbeit* [1976] ECR 1669; judgment of 15 December 1976 in Case 39/76 *Metaalnijverheid* v *Mouthaan* [1976] ECR 1901; judgment of 17 February 1977 in Case 76/76 *Di Paolo* v *Office National de l'Emploi* [1977] ECR 315; judgment of 1 December 1977 in Case 66/77 *Kuyken* v *Rijksdienst voor Arbeidsvoorziening* [1977] ECR 2311; judgment of 20 March 1979 in Case 139/78 *Coccioli* v *Bundesanstalt für Arbeit* [1979] ECR 991; judgment of 19 June 1980 in Joined Cases 41, 121 and 796/79 *Testa and Others* v *Bundesanstalt für Arbeit* [1980] ECR 1979; judgment of 27 May 1982 in Case 227/81 *Aubin* v *Unedic and Assedic* [1982] ECR 1991. The following principles may be discerned.

Normally a worker who is unemployed claims unemployment benefits in the State where he was last employed. Article 67, which makes provision for the aggregation of periods of insurance or employment, makes such aggregation subject to the condition that the person concerned should have completed lastly either periods of insurance or periods of employment, as the case may be, in accordance with the provisions of the legislation under which the benefits are claimed.

However, for certain categories of workers Article 71 (1) provides an exception to that requirement. Workers who, during their last employment, retained close links with a country other than that where they were employed, namely the country where they were settled or where they habitually resided, have a choice: they may either apply to the unemployment benefit scheme in the State in which they were last employed or claim benefits in the State in which they reside. The worker makes that choice, in particular, by making himself available to the employment office of the State from which he is claiming benefits (see paragraph 19 of the decision in *Aubin* cited above).

The Commission submits that Article 71 (1) (a) (ii) and (b) (ii) provide an exception to the general rule set out in Article 67 and are therefore to be interpreted narrowly (see paragraph 13 of the decision in *Di Paolo* cited above).

Article 69 is intended to make it easier for an unemployed person to look for employment by maintaining his right to benefits for three months, thus freeing him, during that period, from the requirement of making himself available to the employment office of the competent State and therefore being subject to any checks organized in that State (see *Coccioli* judgment, cited above).

The Commission is of the view that in the present case the respondent in the main action falls exclusively within the general rule set out in Article 67. Her last employment was in the Federal Republic of Germany, the country where she also resided. She did not settle in France until after having resigned from her employment. She could therefore have continued to receive benefits from Germany for three months pursuant to Article 69.

The Commission points out a misunderstanding on the part of the Cour d'Appel which misconstrued the expression "the competent State". The Cour d'Appel took the view that France was the competent State, because the competent

institution from which benefits had been claimed was in its territory.

The Commission observes that the competent State concerned in Article 71 is the State of last employment envisaged by Article 67. This is evident from the combined effect of the definitions in Article 1 (o) and (q) and of Articles 13 and 67 of the regulation.

Mrs Guyot is therefore entitled to receive German benefits for three months, and to continue to receive them on condition that she returns to Germany or that she obtains an extension of the time-limit. She was at no time entitled to French unemployment benefits, on the other hand, since her last employment was not in France.

Unemployment benefits may be paid to unemployed persons who are not in the Member State where they were last employed in two cases only:

For a period of three months, subject to the conditions laid down by Article 69;

For an unlimited period, provided that the worker was already resident in another Member State during his last employment (Article 71).

The Commission points out that the unlimited retention of entitlement to unemployment benefits in the case of a change of residence after the cessation of employment is not provided for by the Community rules as they now stand. The reason is that at the time Regulation No 1408/71 was drawn up, the Community was experiencing a period of economic prosperity and unemployed persons could thus find work reasonably quickly. The need to retain the right to unemployment benefits outside the country of last employment had not yet made itself felt. The change in the situation has prompted the Commission to submit a proposal to the Council for a regulation amending the original regulation (proposal submitted by the Commission to the Council on 18. 6. 1980, Official Journal, C 169 of 9. 7. 1980, p. 22).

The Commission's analysis is unaffected by the fact that the respondent in the main action received French unemployment benefits granted by the French institutions without reference to the criterion of last employment laid down by Article 67. Article 25 (2) is not applicable in the present case, inasmuch as the respondent in the main action is not covered by Article 71 (1) (b) (ii).

In conclusion, with regard to the reply to be given to the question submitted by the Cour d'Appel, Rouen, the Commission recalls that that court considers France as being the competent State, although it has correctly noted the fact which prevents Mrs Guyot from relying upon Article 71 (1) (b) (ii), and therefore, by the same token, on Article 25 (2) of Regulation No 1408/71, namely the fact that during her last employment she did not reside in a State other than the State where she was employed.

It therefore suggests that the question submitted by the Cour d'Appel be answered as follows:

As is shown, in particular, by the title of Section 3 of the Chapter in which it is included, Article 71 of Regulation No 1408/71 is applicable only in the case of unemployed persons who, during their last employment, were already residing in a Member State other than the State where they were last employed.

III — Oral procedure

At the sitting on 26 January 1984, F. Herbert presented oral argument on behalf of the Commission.

The Advocate General delivered his opinion at the sitting on 22 March 1984.

Decision

1 By a judgment of 30 June 1982 which was received at the Court on 7 July 1983, the Cour d'Appel [Court of Appeal], Rouen referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question as to the interpretation of Regulation 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 The question was raised in the context of an appeal brought by the Caisse Primaire d'Assurance Maladie [Local Sickness Insurance Fund, hereinafter referred to as "the Fund"], Rouen, against a decision of the Commission de Première Instance de Sécurité Sociale [Social Security Board of First Instance] ordering it to pay the respondent in the main action the sums corresponding to reimbursements for medical expenses incurred between January and March 1978 and to daily allowances in respect of incapacity for work.

3 The respondent in the main procedings, of German nationality, resigned from her employment in the Federal Republic of Germany on 30 June 1977. On 1 August 1977 she registered with the German employment authorities as a person seeking employment. She went to France in September 1977 to rejoin her husband, settled permanently there, and registered with the Agence Nationale pour l'Emploi [National Employment Agency]. For three months she received German unemployment benefit and subsequently she received unemployment benefit from the Association pour l'Emploi dans les Industries et le Commerce (Assedic) [Association for Employment in Industry and Commerce].

4 The Fund refused to reimburse her for medical expenses on the grounds that Article 25 of Regulation No 1408/71 gave unemployed migrant workers the right to sickness and maternity benefits only if they were also entitled to

unemployment benefits. According to the Fund, the respondent in the main proceedings was not entitled to French unemployment benefits because she had not worked in France before becoming unemployed.

5 In order to decide the dispute the Cour d'Appel stayed the proceedings and submitted the following question to the Court of Justice:

"In the case envisaged by Article 71 (1) (b) (ii) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971, is residence in the competent State prior to the end of the period of last employment in the Member State other than the competent State one of the conditions for obtaining the benefits referred to in Article 71?"

6 The provision which the Court is asked to interpret must be placed in its context. It is contained in Chapter 6 of Regulation No 1408/71, which deals with unemployment. According to the system established by that chapter, the unemployed person must apply to the competent institution in the Member State in which he was last employed in order to obtain the unemployment benefits provided for. If the unemployed person leaves that Member State for the purpose of seeking employment, he continues to be entitled to those benefits, to be paid by the competent institution of the Member State in which he was last employed, for a period of three months. At the end of that period of three months, the unemployed person must return to that State if he is to continue to be entitled to the benefits.

7 Article 71 (1) provides for an exception to that rule in the case of "an unemployed person who, during his last employment, was residing in the territory of a Member State other than the competent State". In such a case, the person concerned may make himself available for work to the employment services of the Member State in which he resides or of the competent State, as the case may be, and thus receive unemployment benefits after the expiry of the three month period. That exception is intended to protect frontier workers and other persons who reside in a Member State other than that in which they are employed.

8 By "competent State", within the meaning of that provision, the Community legislature is referring to the Member State in whose territory the competent

institution is situated, that is, the Member State in which the person was last employed. The provision therefore concerns only workers who were residing in a Member State other than that in which they were last employed.

9 The reply to the question submitted by the national court must therefore be that Article 71 of Regulation No 1408/71 does not apply to an unemployed person who, during his last employment, was residing in the Member State in which he was employed.

Costs

10 The costs incurred by the Commission of the European Communities, which 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 proceedings pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the question referred to it by the Cour d'Appel, Rouen, by judgment of 30 June 1983, hereby rules:

Article 71 of Regulation No 1408/71 of the Council of 14 June 1971 does not apply to an unemployed person who, during his last employment, was residing in the Member State in which he was employed.

Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 11 October 1984.

For the Registrar

D. Louterman
Administrator

G. Bosco
President of the First Chamber