JUDGMENT OF THE COURT (Fourth Chamber)
8 July 1992 *

In Case C-102/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundessozialgericht (Federal Social Court) for a preliminary ruling in the proceedings pending before that court between

Doris Knoch

and

Bundesanstalt für Arbeit,

on the interpretation of Regulation No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416),

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, M. Diez de Velasco and J. L. Murray, Judges,

Advocate General: W. Van Gerven,
Registrar: D. Triantafyllou, Administrator,

after considering the written observations submitted on behalf of:

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of the Economy, acting as Agent,

* Language of the case: German.

— the French Government, represented by P. Pouzoulet, Sous-directeur du Droit Economique, Ministry of Foreign Affairs, and C. Chavance, Attaché Principal d'Administration Centrale in the same ministry, acting as Agents,

— the Commission of the European Communities, by M. Patakia, of its Legal Service, assisted by B. Schulte, of the Max Planck Institute, Munich, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the German Government, the French Government and the Commission, represented by D. Gouloussis, Legal Adviser, and B. Schulte, acting as Agents, at the hearing on 19 March 1992,

after hearing the Opinion of the Advocate General at the sitting on 6 May 1992,

gives the following

Judgment

1 By order of 21 February 1991, received at the Court Registry on 28 March 1991, the Bundessozialgericht referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Articles 12(1), 67, 69 and 71(1) of Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) and Article 84(2) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, as consolidated by Regulation (EEC) No 2001/83 (OJ 1983 L 230, p. 86).

2 The question were raised in proceedings between Doris Knoch and the Bundesanstalt für Arbeit (Federal Employment Office, hereinafter 'the Bundesanstalt') following the latter's refusal to grant Miss Knoch unemployment benefit.

3 Miss Knoch, a German national, was employed in the United Kingdom from 1 October 1982 to 30 June 1983 and from 1 October 1983 to 30 June 1984 as an assistant in German language and literature at the University of Bath. She obtained her post through the Deutscher Akademische Austauschdienst (German Academic Exchange Service). Over the period of her employment in the United Kingdom, Miss Knoch was affiliated to the social security scheme and paid unemployment-insurance contributions in the United Kingdom. At the same time, the Academic Exchange Service paid her a compensatory allowance, which she also received during her summer vacations from 1 July to 30 September 1983 and from 1 July to 30 September 1984.

4 Miss Knoch had rented a house in Bath but had not had her name removed from the register of residents in Bruchsal, where she was registered as living at her parents' address. She stayed in Bruchsal during the 1983 summer vacation and also in July 1984. At the beginning of August 1984, she left Bruchsal for three months in order to look for work in the United Kingdom, but was unsuccessful. In November or December 1984 she returned to Germany.

5 Following the termination of her employment, Miss Knoch registered in Bath as unemployed. She received unemployment benefit between the beginning of July and 21 August 1984. After returning to Bruchsal, she registered as unemployed on 19 December 1984 with the Bundesanstalt für Arbeit (employment office) in Karlsruhe and applied for unemployment benefit. The employment office rejected her application on the ground that she had not completed the prescribed qualifying period and Community law did not allow account to be taken of the time she had spent in the United Kingdom.

6 By judgment of 28 January 1987, the Sozialgericht (Social Court) set aside that decision and ordered the Bundesanstalt to pay Miss Knoch unemployment benefit

as from 19 December 1984 under the conditions laid down by law. By judgment of 16 August 1988, the Landessozialgericht (Higher Social Court) dismissed the appeal then brought by the Bundesanstalt. It stated that the qualifying conditions had been met by virtue of Miss Knoch's having been employed in the United Kingdom. The Bundesanstalt should have taken account of her periods of employment there pursuant to Article 71(1)(b)(ii) of Regulation No 1408/71.

7 In its appeal on a point of law, the Bundesanstalt contends that Articles 12 and 71 of Regulation No 1408/71 have been infringed. It considers that Article 71(1)(b) offers a worker other than a frontier worker the possibility of receiving benefits either in the State of his last employment or in the State of his residence. The prohibition on overlapping benefits laid down in the first sentence of Article 12(1) of Regulation No 1408/71 means, in its view, that Miss Knoch is not entitled to unemployment benefits because she received such benefits under the United Kingdom legislation. Miss Knoch could only have made her claim under the United Kingdom legislation, pursuant to Article 69 of Regulation No 1408/71. However, Miss Knoch relies on Article 67 of Regulation No 1408/71. She maintains that the Bundesanstalt must take account of periods of insurance completed by her as an employed person under United Kingdom legislation as if they had been periods of insurance completed under German legislation.

8 It was in those circumstances that the national court decided to stay the proceedings pending a preliminary ruling by the Court on the following questions:

'1. Is an employed person, other than a frontier worker, who is wholly unemployed and resided in the territory of a Member State other than the competent one during his last employment, entitled under Article 71(1)(b)(ii) and Article 67 of Regulation (EEC) No 1408/71 to receive benefits in accordance with the legislation of the Member State in which he resides or to which he returns, even if he has previously received unemployment insurance benefits from the institution of the competent Member State?

2. (a) Does the first sentence of Article 12(1) of Regulation No 1408/71 apply in the context of Article 71(1)(b)(ii) and Article 67 of that regulation with the result that a right to several similar benefits made on the basis of the same period of compulsory insurance can be neither conferred nor maintained under that regulation?

(b) When do unemployment benefits constitute benefits of the same kind within the meaning of the first sentence of Article 12(1) of Regulation No 1408/71?

(c) Must an institution of a Member State, under whose legislation the acquisition and duration of a right to unemployment benefit are contingent on the completion of insurance periods, in a situation under Article 71(1)(b)(ii) and Article 67 of Regulation No 1408/71, in accordance with the first sentence of Article 12(1) thereof,

take no account, with regard to the acquisition and duration of a right, of those periods of insurance which were completed as an employed person under the legislation of another Member State, in so far as such periods have already given rise to a benefit of the same kind in that other Member State,

or

must effect be given to the first sentence of Article 12(1) of Regulation No 1408/71 with regard to unemployment benefit in such a way that the periods of insurance are to be taken into account as a basis for the subsequent entitlement, without reference to the original claim, but the length of the period of entitlement subsequently acquired is reduced by the number of days for which the original benefits were received?

3. (a) Is the certified statement which the competent institution for matters relating to unemployment in the Member State, to whose legislation a migrant worker was last subject, issues pursuant to Article 84(2) of Regulation (EEC) No 574/72 binding on the institution and the courts of another Member State in so far as the certified statement indicates that the migrant worker has no right to benefit under Article 69 of Regulation No 1408/71?

(b) When can an unemployed person claim benefits under Article 69 of Regulation No 1408/71 pursuant to the legislation to which he was last subject, within the meaning of the third sentence of Article 71(1)(b)(ii) of that regulation, with the result that the granting of benefits under the legislation of the State in which he resides is temporarily suspended?

(c) Does the suspension, within the meaning of the third sentence of Article 71(1)(b)(ii) of Regulation No 1408/71, of receipt of benefits under the legislation of the Member State in which the unemployed person resides or to which he returns in respect of the period for which he is entitled to benefits, under Article 69 of Regulation No 1408/71, in accordance with the legislation to which he was last subject, mean only that the unemployed person does not during this time receive benefits from the institution of the State in which he resides, but may thereafter claim such benefits for the full period, or does the suspension of benefits also have the result that the length of the period of entitlement to benefits is reduced by the number of days for which the suspension applies?'

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the national legislation, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

General observations

10 In order to answer those questions it is first necessary to refer to a number of previous decisions of the Court on the provisions of Regulation No 1408/71 concerning unemployment.

11 Article 67(1) of Regulation No 1408/71 requires a Member State whose legislation makes the acquisition, retention or recovery of the right to unemployment benefits subject to the completion of periods of insurance to take into account, to the extent necessary, periods of insurance or employment completed as an employed person under the legislation of any other Member State as though they were periods of insurance completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as periods of insurance had they been completed under that legislation.

12 However, Article 67(3) provides that that obligation applies only to the Member State under whose legislation the person concerned last completed periods of insurance in accordance with the provisions of the legislation under which the benefits are claimed, except in the cases referred to in Article 71(1)(a)(ii) and (b)(ii).

13 Article 71 of Regulation No 1408/71 lays down specific provisions for unemployed persons who, during their last employment, resided in a Member State other than that in which they had been employed.

14 As the Court held in its judgment in Case 236/87 *Bergemann* v *Bundesanstalt für Arbeit* [1988] ECR 5125, according to the ninth recital in the preamble to Regulation No 1408/71, those provisions are intended to guarantee to migrant workers unemployment benefits under the most favourable conditions for seeking new employment.

15 Article 71(1)(b)(ii) of Regulation No 1408/71 provides:

'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, shall receive benefits in accordance with the legislation of that State as if he had last been employed there; the institution of the place of residence shall provide such benefits at its own expense ...'.

16 As the Court held in its judgment in Case 1/85 *Miethe* v *Bundesanstalt für Arbeit* [1986] ECR 1837, by virtue of that provision, workers who are wholly unemployed are entitled to make a choice between the benefits offered by the Member State in which they were last employed and those offered by the Member State in which they reside. They exercise that option by making themselves available either to the employment services of the State in which they were last employed (Article 71(1)(b)(i)) or to those of the Member State in which they reside (Article 71(1)(b)(ii)).

17 The French Government contests the interpretation adopted by the Bundesanstalt to the effect that Miss Knoch satisfies the conditions laid down by Article 71(1)(b)(ii), in particular the Bundesanstalt's view that she continued to be resident in Germany during her stay in the United Kingdom. According to the French Government, certain factors in this case compel the conclusion that Miss Knoch was not habitually resident in Germany. In the first place, she stayed only four months in Germany and her centre of interests was not exclusively in Germany since she sought employment in the United Kingdom. Next, the interpretation whereby, in the present case, Germany is the State of residence within the meaning of Article 71(1)(b)(ii) cannot be reconciled with current tax provisions of Community law, in particular Article 7 of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ 1983 L 105, p. 59).

18 It must be borne in mind, in the first place, that although the Court has no jurisdiction under Article 177 of the EEC Treaty to apply Community law to specific cases, it can nevertheless provide the national court with the interpretative criteria needed to enable it to decide the case before it.

19 The Court has already laid down the general criteria for the application of Article 71(1)(b)(ii) in its judgment in Case 76/76 *Di Paolo* v *Office National de l'Emploi* [1977] ECR 315.

20 In the first place, according to that judgment, those provisions must be interpreted strictly since they constitute an exception to the general rule laid down in Article 67(3) of Regulation No 1408/71 that an unemployed person may claim unemployment benefits only if he has completed lastly periods of insurance or of employment in accordance with the provisions of the legislation under which the benefits are claimed.

21 Secondly, the Court took the view, in that judgment, that the term 'Member State in which the worker resides' must be limited to the State where the worker, although employed in another Member State, continues habitually to reside and where the habitual centre of his interests is also situated.

22 However, the Court pointed out that whenever a worker has stable employment in a Member State there is a presumption that he resides there and that it is important to take into account not only the family situation of the worker but also the reasons which led him to move, and the nature of the work. Finally, the Court found that the addition of the words 'or who returns to that territory' implies merely that the concept of residence, as defined earlier, does not necessarily exclude non-habitual residence in another Member State.

23 The Court inferred that, for the purposes of applying Article 71(1)(b)(ii), account should be taken of the length and continuity of residence before the person concerned moved, the length and purpose of his absence, the nature of the occupation found in the other Member State and the intention of the person concerned as it appears from all the circumstances.

24 It is for the national court to apply those criteria to the case before it. It is for the Court of Justice, under Article 177 of the EEC Treaty, to indicate to the national court the conditions under which the circumstances set out in the order for reference may be taken into account in applying the abovementioned criteria.

25 Miss Knoch was employed for two academic years as a university assistant in another Member State under a programme for university exchanges; at the end of that period she became unemployed; and her attempts to find work in that State proved unsuccessful. She cannot therefore be considered to have been in stable employment.

26 As regards the fact that she held a post for 21 months in another Member State, it should be borne in mind, as the Court has already indicated in its judgment in Case 76/76 *Di Paolo*, cited above, that there is no precise definition of the criterion of length of absence and that it is not an exclusive criterion.

27 Indeed, no provision of Regulation No 1408/71 lays down a time-limit beyond which Article 71(1)(b)(ii) must no longer be applied. A contrary interpretation would conflict with the aim pursued by that provision, which is to optimize a worker's chances of resuming employment.

28 Finally, the fact that the worker received unemployment benefits and sought employment in the other Member State is not a decisive factor such as to determine that she was resident in that State for the purposes of Article 71(1)(b)(ii). At most, it indicates that she might have transferred her residence to that State had she found work there.

29 As regards the argument based on the meaning of habitual residence under Article 7 of Directive 83/182, it need merely be observed that that is a definition peculiar to taxation which must be interpreted in the light of the aim and scheme of the Community legislation concerned.

The first question

30 It is apparent from the order for reference that the national court's first question seeks to determine whether a worker who is wholly unemployed retains, under Regulation No 1408/71, entitlement to unemployment benefits in the Member State in which he resides or to which he returns, where he previously received unemployment benefits from the institution of the competent Member State.

31 According to the national court, the German Government and the Commission, the answer to that question is in the affirmative. The French Government, on the other hand, considers that Article 67 of Regulation No 1408/71 precludes entitlement to successive benefits. In support of that contention, it relies on the rule laid down in Article 13(1) that only one legislation is to apply and on the general prohibition on overlapping benefits laid down in Article 12 of Regulation No 1408/71.

32 As the Court stated in its judgment in Case 58/87 *Rebmann* v *Bundesversicherungsanstalt für Angestellte* [1988] ECR 3467, Article 71 of Regulation No 1408/71 derogates from the general rule of attachment contained in Article 13(1) of that regulation, according to which a worker is subject to the legislation of the State in whose territory he is employed.

33 As the Court has observed in paragraph 14 above, the aim of Article 71 is to guarantee unemployment benefits to migrant workers under the most favourable conditions for seeking new employment. That aim would not be attained if, as a result of having opted initially for benefits in the Member State to whose legislation he was last subject, the person concerned were deprived of the right to benefits under the legislation of the Member State in which he resides.

34 It also follows from the third sentence of Article 71(1)(b)(ii), according to which receipt of benefits is to be suspended for any period during which the unemployed person may, under Article 69, make a claim for benefits under the legislation to which he was last subject, that an unemployed person is not precluded from first claiming benefits in the State in which he was last employed and subsequently in the State in which he resides.

35 Consequently, it must be stated in reply to the first question that a worker, other than a frontier worker, who is wholly unemployed and who resided in the territory of a Member State other than the competent one during his last employment does not lose entitlement to the unemployment benefits referred to by Article 71(1)(b)(ii) of Regulation No 1408/71, in accordance with the legislation of the Member State in which he resides or to which he returns, by virtue of the fact that he has previously received unemployment insurance benefits from the institution of the Member State to whose legislation he was last subject.

The second question

36 The first part of the second question seeks to determine whether the first sentence of Article 12(1) of Regulation No 1408/71 applies in the context of Article 71(1)(b)(ii) and of Article 67 of that regulation.

37 It must be borne in mind that the first sentence of Article 12(1) prohibits overlapping benefits. By virtue of the second sentence of Article 12(1), that prohibition does not apply to benefits in respect of invalidity, old age, death or occupational disease. It follows that the first sentence of Article 12(1) applies in the context of Article 71(1)(b)(ii) and of Article 67 of Regulation No 1408/71.

38 It must therefore be stated in reply to the national court's question that the prohibition on overlapping benefits laid down by Article 12(1) of Regulation No 1408/71 applies in the context of Article 71(1)(b)(ii) and of Article 67 of Regulation No 1408/71.

39 In the second part of Question 2, the national court asks what criteria may be used to determine whether unemployment benefits are 'benefits of the same kind' within the meaning of the first sentence of Article 12(1).

40 The Court has consistently held that social security benefits must be regarded, irrespective of the characteristics peculiar to the various national laws, as benefits of the same kind when their purpose and object, together with the basis on which they are calculated and the conditions for granting them are the same. On the other hand, characteristics which are purely formal must not be considered relevant criteria for the classification of the benefits.

41 It is apparent from the documents before the Court that the national court seeks clarification regarding the requirement of a basis of calculation and of conditions for granting benefits which are the same, where there are differences between two benefits which concern their duration and amount and the length of the prescribed qualifying period.

42 In view of the numerous differences between the national social security schemes, if the basis for the calculation and the conditions for the grant of benefits were required to be exactly the same, the prohibition on overlapping benefits contained in Article 12 would be applied to a considerably lesser extent. Such a result would run counter to the aim of that prohibition, which is to obviate unjustified duplication of social security benefits.

43 As is apparent from the judgment in Case 171/82 *Valentini* v *ASSEDIC* [1983] ECR 2157, the fact that the basis for the calculation and the conditions for the grant of unemployment benefits are not the same does not preclude the application of Article 12(1) provided that those differences are linked with characteristics peculiar to the various national laws. Accordingly, such characteristics must be examined as part of the overall social security system in force in a Member State.

44 Thus, unemployment benefits are to be regarded as benefits of the same kind, within the meaning of Article 12(1) of Regulation No 1408/71, where they are intended to replace the remuneration which a person has lost by reason of unemployment and thereby provide for the maintenance of that person, and where the differences between those benefits, particularly those relating to the basis of the calculation and the conditions for granting them, are the result of structural differences between the national schemes.

45 Consequently, it must be stated in reply to the national court's question that unemployment benefits constitute benefits of the same kind, within the meaning of the first sentence of Article 12(1) of Regulation No 1408/71, where they are intended to replace the remuneration which a person has lost by reason of unemployment and thereby provide for the maintenance of that person, and where the differences between those benefits, particularly those relating to the basis of the calculation and the conditions for granting them, are the result of structural differences between the national schemes.

46 Finally, the national court seeks to ascertain how the competent institution of a Member State whose legislation makes the acquisition and duration of a right to

unemployment benefit contingent on the completion of insurance periods must, in a situation under Article 71(1)(b)(ii) and Article 67 of Regulation No 1408/71, apply the prohibition on overlapping benefits contained in Article 12(1) of that regulation.

47 The national court envisages two possibilities in that regard. Either the competent institution takes no account, as regards the acquisition and duration of entitlement to benefits, of the periods of insurance completed by a worker under the legislation of another Member State, in so far as those benefits have already given rise to the payment of a benefit of the same kind in another Member State, or else the competent institution takes account, for the calculation of entitlement to unemployment benefit, of the periods of insurance completed by the unemployed person under the legislation to which he was last subject. In the latter case, it must nevertheless deduct from the period of entitlement to unemployment benefits the days for which benefits were received under that legislation.

48 It need merely be observed that the result of the second method of calculation is that the unemployed person is not subject, or is subject to a lesser extent, to a qualifying period in the Member State of residence, which, in keeping with the aim pursued by Article 71(1)(b), facilitates the search for employment on his return.

49 Consequently, it must be stated in reply to the national court's question that the competent institution of a Member State under whose legislation the acquisition and duration of a right to unemployment benefit are contingent on the completion of insurance periods must, in the circumstances covered by Article 71(1)(b)(ii) and Article 67 of Regulation No 1408/71, in accordance with the first sentence of Article 12(1) thereof, take account, for the calculation of entitlement to unemployment benefit, of the periods of insurance completed under the legislation to which the unemployed person was last subject. However, it must deduct from the period of entitlement acquired to unemployment benefits the days for which benefits were received under the legislation in question.

The third question

50 The first part of the third question from the national court asks whether the certified statement referred to in Article 84(2) of Regulation No 574/72 is binding on the institution of another Member State and the courts of that State.

51 That certified statement is a standard form drawn up by the Administrative Commission on Social Security for Migrant Workers referred to in Articles 80 and 81 of Regulation No 1408/71.

52 As the Court stated in its judgment in Case 98/80 *Romano* v *INAMI* [1981] ECR 1241, a body such as the Administrative Commission on Social Security for Migrant Workers cannot be authorized by the Council to adopt legislative measures. A decision of the Administrative Commission, although capable of providing assistance to social security institutions responsible for applying Community law in that sphere, cannot require those institutions to follow certain methods or to adopt certain interpretations when they come to apply Community law.

53 Consequently, the competent institution of the Member State where the person concerned resides or, in legal proceedings, the national court remains entirely free to verify the content of that statement.

54 It must therefore be stated in reply to the national court's question that the certified statement issued in accordance with Article 84(2) of Regulation No 574/72 does not constitute irrefutable proof vis-à-vis either the institution of another Member State which is competent for matters relating to unemployment or the courts of that State.

55 In the second and third parts of its third question, the national court seeks clarification as to the effect of the third sentence of Article 71(1)(b)(ii) of Regulation No 1408/71.

56 Pursuant to that provision, the receipt of benefits under the legislation of the State of residence is to be suspended for any period during which the unemployed person may, under Article 69, make a claim for benefits under the legislation to which he was last subject.

57 The national court asks first whether suspension takes place only when all the conditions laid down in Article 69 are satisfied or whether it is sufficient for the worker to have been in a position to satisfy those conditions, even if he did not do so.

58 As the Court stated in its judgment in Case 27/75 *Bonaffini* v *INPS* [1975] ECR 971, Article 69 is intended only to ensure for the migrant worker the limited and conditional preservation of the unemployment benefits of the competent State, even if he goes to another Member State, and consequently that other Member State cannot rely on mere failure to comply with the conditions prescribed by that article to deny the worker entitlement to the benefits which he may claim under the national legislation of that State.

59 It follows that receipt of benefits under the legislation of the Member State in whose territory the unemployed person resides or to which he returns may be suspended, pursuant to the third sentence of Article 71(1)(b)(ii) of Regulation No 1408/71, only in so far as the conditions laid down by Article 69 of the abovementioned regulation have actually been fulfilled and the person concerned accordingly receives benefits in the Member State to whose legislation he was last subject.

60 Finally, the national court seeks to ascertain whether suspension of that kind means only that the unemployed person does not during that time receive benefits from the Member State in whose territory he resides, but may thereafter claim in full the benefits paid by the competent institution of that State, or whether the length of the period of entitlement to unemployment benefits is also reduced by the number of days for which the suspension applied.

61 Reference need merely be made to the Court's remarks in paragraph 48 above concerning the application of Article 12 of Regulation No 1408/71 in cases covered by Article 71(1)(b)(ii) and Article 67 of that regulation.

62 Consequently, it must be stated in reply to the national court's question that in the event of suspension, pursuant to the third sentence of Article 71(1)(b)(ii) of Regulation No 1408/71, of receipt of benefits under the legislation of the State in whose territory the unemployed person resides, the competent institution of that Member State must deduct from the benefits which it pays the benefits which the unemployed person actually received in the Member State to whose legislation he was last subject. The period during which the unemployed person actually received unemployment benefits under the legislation of the latter State must be deducted from the period of entitlement to benefits under the legislation of the State of residence.

Costs

63 The costs incurred by the French and German 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Bundessozialgericht by order of 21 February 1991, hereby rules:

1) **A worker, other than a frontier worker, who is wholly unemployed and who resided in the territory of a Member State other than the competent one during his last employment does not lose entitlement to the unemployment benefits referred to by Article 71(1)(b)(ii) 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 accordance with the legislation of the Member State in which he resides or to which he returns, by virtue of the fact that he has previously received unemployment insurance benefits from the institution of the Member State to whose legislation he was last subject.**

2) **The prohibition on overlapping benefits laid down by Article 12(1) of Regulation No 1408/71 applies in the context of Article 71(1)(b)(ii) and of Article 67 of Regulation No 1408/71.**

3) **Unemployment benefits constitute benefits of the same kind, within the meaning of the first sentence of Article 12(1) of Regulation No 1408/71, where they are intended to replace the remuneration which a person has lost by reason of unemployment and thereby provide for the maintenance of that person, and where the differences between those benefits, particularly those relating to the basis of the calculation and the conditions for granting them, are the result of structural differences between the national schemes.**

4) **The competent institution of a Member State under whose legislation the acquisition and duration of a right to unemployment benefit are contingent on the completion of insurance periods must, in the circumstances covered**

by Article 71(1)(b)(ii) and Article 67 of Regulation No 1408/71, in accordance with the first sentence of Article 12(1) thereof, take account, for the calculation of entitlement to unemployment benefit, of the periods of insurance completed under the legislation to which the unemployed person was last subject. However, it must deduct from the period of entitlement acquired to unemployment benefits the days for which benefits were received under the legislation in question.

5) The certified statement issued in accordance with Article 84(2) of Regulation No 574/72 does not constitute irrefutable proof vis-à-vis either the institution of another Member State which is competent for matters relating to unemployment or the courts of that State.

6) Receipt of benefits under the legislation of the Member State in whose territory the unemployed person resides or to which he returns may be suspended, pursuant to the third sentence of Article 71(1)(b)(ii) of Regulation No 1408/71, only in so far as the conditions laid down by Article 69 of the abovementioned regulation have actually been fulfilled and the person concerned accordingly receives benefits in the Member State to whose legislation he was last subject.

7) In the event of suspension, pursuant to the third sentence of Article 71(1)(b)(ii) of Regulation No 1408/71, of receipt of benefits under the legislation of the State in whose territory the unemployed person resides, the competent institution of that Member State must deduct from the benefits which it pays the benefits which the unemployed person actually received in the Member State to whose legislation he was last subject. The period during which the unemployed person actually received unemployment benefits under the legislation of the latter State must be deducted from the period of entitlement to benefits under the legislation of the State of residence.

Kapteyn Diez de Velasco Murray

Delivered in open court in Luxembourg on 8 July 1992.

J.-G. Giraud
Registrar

P. J. G. Kapteyn
President of the Fourth Chamber