JUDGMENT OF THE COURT (Fifth Chamber)

21 February 2002 *

In Case C-215/00,

REFERENCE to the Court under Article 234 EC by the Regeringsrätten (Sweden) for a preliminary ruling in the proceedings pending before that court between

Arbetsmarknadsstyrelsen

and

Petra Rydergård,

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 amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1),

* Language of the case: Swedish.

THE COURT (Fifth Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, S. von Bahr, D.A.O. Edward, A. La Pergola and C.W.A. Timmermans, Judges,

Advocate General: L.A. Geelhoed,

Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Arbetsmarknadsstyrelsen, by J.I. Samuelsson Apelgren and A. Rydh, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by K. Oldfelt Hjertonsson and D. Martin, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2001,

gives the following

Judgment

1 By decision of 3 May 2000, received at the Court on 31 May 2000, the Regeringsrätten (Supreme Administrative Court) referred for a preliminary ruling under Article 234 EC two questions 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 amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) ('Regulation No 1408/71').

2 Those questions have arisen in a dispute between Arbetsmarknadsstyrelsen (National Labour Directorate) ('the AMS') and Ms Rydergård concerning the refusal by the AMS to issue her with a certificate allowing her to travel to another Member State to seek work there while at the same time retaining entitlement to Swedish unemployment benefits.

Community legislation

3 Article 69(1) of Regulation No 1408/71 provides as follows:

'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.

(b) He must register as a person seeking work with the employment services of each of the Member States to which he goes and be subject to the control procedure organised therein. This condition shall be considered satisfied for the period before registration if the person concerned registered within seven days of the date when he ceased to be available to the employment services of the State he left. In exceptional cases, this period may be extended by the competent services or institutions.

(c) Entitlement to benefits shall continue for a maximum period of three months from the date when the person concerned ceased to be available to the employment services of the State which he left, provided that the total duration of the benefits does not exceed the duration of the period of benefits he was entitled to under the legislation of that State. In the case of a seasonal worker such duration shall, moreover, be limited to the period remaining until the end of the season for which he was engaged.'

4 Article 83(1) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, as amended and updated by Regulation No 118/97 ('Regulation No 574/72') provides that, in order to retain the right to benefits, an unemployed person covered by

Article 69(1) of Regulation No 1408/71 is required to submit to the institution of the place to which he has gone a certified statement in which the competent institution certifies that that person is still entitled to benefits under the conditions laid down in Article 69(1)(b) of Regulation No 1408/71.

National legislation

5 According to Chapter 4, Article 10, of Lagen (1962:381) om allmän försäkring (Law on Social Insurance), a parent may claim temporary parents' benefit for the care of a sick child if the parent is obliged to suspend gainful employment on account, *inter alia*, of the sickness of the child or the fact that the sickness is contagious.

6 Unemployment benefit to compensate for the loss of income is payable, under Lagen (1997:238) om arbetslöshetsförsäkring (Law on Unemployment Benefit) to members of an unemployment scheme who are unemployed and who have previously worked for a certain period. In order to be entitled to this benefit, an applicant must, *inter alia*, be fit for work, not prevented from working, and also prepared to accept any appropriate work offered. The benefit is awarded in the form of daily allowances.

7 Under Article 20 of the Law on Unemployment Benefit, daily allowances cannot be awarded for any period during which an applicant is in receipt of parents' benefit.

The dispute in the main proceedings

8 Ms Rydergård was registered as unemployed with the Swedish employment services with effect from 25 September 1998 and received unemployment benefit. She applied for the certified statement referred to in Article 83(1) of Regulation No 574/72 on the ground that she intended to travel to France on 27 October 1998 in order to look for work there.

9 The AMS, which issues such certified statements, learned that Ms Rydergård had received temporary parents' benefit for care of her sick child from 28 to 30 September 1998 and on 12 and 13 October 1998, that is to say, for a total of five days during the period when she was registered as unemployed. The AMS thereupon rejected Ms Rydergård's application for the certified statement in question on the ground that she had not been entitled to unemployment benefit for the entire period of at least four weeks immediately prior to the date of her intended departure.

10 Ms Rydergård challenged that decision. The Länsrätt (District Administrative Court) upheld her application and ordered the AMS to issue the certified statement.

11 The AMS appealed unsuccessfully against that decision to the Kammarrätt (Administrative Court of Appeal).

12 The AMS appealed to the Regeringsrätten against the judgment of the Kammarrätt. It argued before the former that the result of the conditions and criteria laid down in Article 69(1) of Regulation No 1408/71 is that, in order to retain

entitlement to Swedish unemployment benefit, a person intending to seek employment in another Member State 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. Further, such person must have received a decision from his or her unemployment scheme that he or she was entitled to unemployment benefit during those four consecutive weeks. There must not have been any interruption of entitlement to benefit.

13 The AMS argued that it is the national legislation of the competent State which determines whether a person intending to seek employment in another Member State is available to the employment services of the competent State and fulfils the conditions governing entitlement to unemployment benefit. Whether a person is 'unemployed' is a matter which can be determined only according to the legislation of the State which awards him or her unemployment benefit. The AMS referred in this connection to point 6 of the Opinion of Advocate General Tesauro in Case C-62/91 *Gray* [1992] ECR I-2737.

14 The AMS takes the view that a person who draws temporary parents' benefit for the care of a sick child cannot be treated as being available to the employment services within the meaning of Article 69(1) of Regulation No 1408/71. During the period covered by that benefit, Ms Rydergård was prevented from immediately accepting employment.

15 According to the AMS, the period of at least four weeks could in this case have begun to run only from the first day of unemployment following the period covered by the temporary parents' benefit, that is to say, from 14 October 1998.

16 As it formed the view that the resolution of the dispute before it necessitated an interpretation of Article 69(1)(a) of Regulation No 1408/71, the Regeringsrätten submitted the following questions to the Court 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 unemployment 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?'

The first question

17 Article 69 of Regulation No 1408/71 enables an unemployed worker to be exempt for a specific period, for the purpose of seeking employment in another Member State, from the obligation imposed by the various national laws to make himself available to the employment services of the competent State without thereby losing his entitlement to unemployment benefits as against that State (Joined Cases 41/79, 121/79 and 796/79 *Testa* [1980] ECR 1979, paragraph 4).

18 That provision is not simply a measure to coordinate national laws on social security. It establishes an independent body of rules in favour of workers claiming the benefit thereof which constitute an exception to national legal rules and which must be interpreted uniformly in all the Member States irrespective of the rules laid down in national law regarding the continuance and loss of entitlement to benefits (*Testa*, cited above, paragraph 5).

19 It follows that the conditions set out in Article 69(1) of Regulation No 1408/71 must be construed as being exhaustive and that the competent authorities of the Member States are not entitled to impose additional conditions.

20 Such a finding does not, however, mean that there is no need to refer to national law, whether of the Member State which the unemployed person has left or of that to which he moves, in order to determine whether certain of the conditions imposed by that provision have been satisfied.

21 This is the position, in particular, with regard to the condition set out in Article 69(1)(b) of Regulation No 1408/71, to the effect that the worker must place himself under the control of the employment services as organised in the Member State to which he moves.

22 The same applies with regard to the condition set out in Article 69(1)(c) of Regulation No 1408/71, which provides that the total period for which benefits are payable cannot exceed the period during which the worker is entitled to benefits under the legislation of the Member State which he has left.

23 In order to verify that those conditions have been satisfied it is necessary to apply, first, the provisions of the law of the Member State to which the worker moves which govern the monitoring of unemployed persons by the employment services

and, second, the provisions of the law of the Member State which the unemployed person has left which govern the duration of the period for which unemployment benefits may be granted. Those provisions may differ from one Member State to another without, however, constituting an obstacle to the uniform application of Article 69 of Regulation No 1408/71.

24 Article 69(1)(a) of Regulation No 1408/71, which provides that a worker 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, must be read in the same context.

25 Uniform application of that provision in all the Member States, making it possible for it to achieve its aim of helping to ensure the free movement of workers in accordance with Article 42 EC, does not require that the detailed arrangements for registration of a worker as a person seeking employment and the question of the conditions under which he may be regarded as having remained available to the employment services of the competent State be regulated in a uniform manner in all Member States.

26 It follows that the question whether a person has remained available to the employment services of the competent State must be examined on the basis of the relevant legislation of that State. In the main proceedings, the referring court must consider *inter alia* whether under the Swedish legislation the loss of entitlement to daily allowances during the period over which temporary parents' benefits were paid means that the worker in question cannot be regarded as having been available to the employment services of the competent State during that period.

27 The answer to the first question must therefore be that the question as to the conditions under which a person may be regarded as having remained available to the employment services of the competent State within the meaning of Article 69(1)(a) of Regulation No 1408/71 must be examined on the basis of the rules of national law of that State.

The second question

28 As has been held in paragraph 19 of the present judgment, in view of the fact that Article 69 of Regulation No 1408/71, which establishes an independent body of rules in favour of workers claiming the benefit thereof, must be given a uniform construction, the conditions to which it subjects application of those rules must be understood as being exhaustive.

29 Article 69(1)(a) of Regulation No 1408/71 provides only that the period during which the worker must have remained available to the employment services of the competent State after becoming unemployed must be at least four weeks.

30 This condition is designed *inter alia* to ensure that before a worker leaves, at the expense of one Member State, to seek work in another Member State the authorities of the first State are able, first, to satisfy themselves that the worker is in fact unemployed and, second, to offer him work.

31 For that purpose it is not necessary to require that the period of four weeks be unbroken. On the contrary, it is sufficient if after becoming unemployed the person seeking work remained available to the employment services of the competent State for a total period of at least four weeks. It is for the national authorities to determine, in each case and on the basis of their national law, the moment which is to be regarded as constituting the commencement of unemployment and to verify — taking account in particular of the reply given to the first question — whether that period has been completed.

32 The answer to the second question must therefore be that Article 69(1)(a) of Regulation No 1408/71 must be construed as meaning that in order to retain entitlement to unemployment benefits as provided for therein, a person seeking work must have remained available to the employment services of the competent State for a total of at least four weeks after the commencement of unemployment, regardless of whether that period was continuous or not.

Costs

33 The costs incurred by the Austrian Government and by the Commission, 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 (Fifth Chamber),

in answer to the questions referred to it by the Regeringsrätten by decision of 3 May 2000, hereby rules:

1. **The question as to the conditions under which a person may be regarded as having remained available to the employment services of the competent State**

within the meaning 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 amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, must be examined on the basis of the rules of national law of that State.

2. Article 69(1)(a) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, must be construed as meaning that, in order to retain entitlement to unemployment benefits as provided for therein, a person seeking work must have remained available to the employment services of the competent State for a total of at least four weeks after the commencement of unemployment, regardless of whether that period was continuous or not.

Jann von Bahr Edward

La Pergola Timmermans

Delivered in open court in Luxembourg on 21 February 2002.

R. Grass P. Jann

Registrar President of the Fifth Chamber