JUDGMENT OF THE COURT (Sixth Chamber)
11 June 1998 *

In Case C-275/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Kammarrätt, Sundsvall, Sweden, for a preliminary ruling in the proceedings pending before that court between

Anne Kuusijärvi

and

Riksförsäkringsverket

on the interpretation of a number of provisions 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, and 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 Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), and further amended by Council Regulation (EEC) No 2195/91 of 25 June 1991 (OJ 1991 L 206, p. 2),

* Language of the case: Swedish.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, R. Schintgen (Rapporteur), G. F. Mancini, J. L. Murray and G. Hirsch, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Riksförsäkringsverket, by H. Almström, Ombudsman in social insurance matters with that authority,

— the Swedish Government, by E. Brattgård, Departmental Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the Netherlands Government, by J. G. Lammers, Legal Adviser, acting as Agent,

— the Finnish Government, by H. Rotkirch, Ambassador, Head of Legal Affairs at the Ministry of Foreign Affairs, acting as Agent,

— the Norwegian Government, by A. Rygnestad, Head of Division at the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by P. Hillenkamp, Legal Adviser, and K. Simonsson, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Riksförsäkringsverket, represented by A. M. Stenberg and I. Anderson, of the Stockholm Bar, the Swedish Government, represented by E. Brattgård, the Netherlands Government, represented by M. Fierstra, Deputy Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, the Finnish Government, represented by T. Pynnä, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, and the Commission, represented by K. Simonsson, at the hearing on 6 November 1997,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1997,

gives the following

Judgment

1 By order of 6 August 1996, received at the Court on 14 August 1996, the Kammarrätt (Administrative Court of Appeal), Sundsvall, Sweden, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of a number of provisions 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, and 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 Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), and further amended by Council Regulation (EEC) No 2195/91 of 25 June 1991 (OJ 1991 L 206, p. 2).

2 Those questions were raised in proceedings between Mrs Kuusijärvi, a Finnish national, and Riksförsäkringsverket (Swedish Social Security Board) concerning Mrs Kuusijärvi's entitlement to continued payment of social security benefits paid

under Swedish legislation after she had transferred her residence to Finland, where, however, she did not work.

3 Mrs Kuusijärvi worked in Sweden for 11 months until 10 February 1993. Thereafter she drew unemployment benefit until 1 February 1994, the date on which her child was born. She was then granted the child allowance provided for under Swedish legislation and also the benefit known as 'föräldrapenning' (hereinafter 'parental benefit') which is paid by reason of the birth of a child and which is governed by Chapter 4 of the lag (1962: 381) om allmän försäkring (Swedish law on the general social security scheme, hereinafter 'the Law').

4 Under the provisions of Chapter 4 of the Law a parent is entitled to parental benefit by reason of the birth of a child for a maximum of 450 days, and this applies until the child has reached the age of eight years or the end of its first school year, whichever is later, provided that the parent has been registered as an insured person with a general social security office for at least 180 consecutive days prior to the commencement of payment of the benefits.

5 It appears from the Swedish Government's observations that, at the time of the entry into force on 1 January 1994 of the Agreement on the European Economic Area (OJ 1994 L 1, p. 1), which rendered Regulation No 1408/71 applicable in Sweden, the parental benefit was notified by the Swedish Government in accordance with Article 5 of that regulation as a maternity benefit.

6 On 24 May 1994 Mrs Kuusijärvi informed the social security office with which she was registered that she was intending to transfer her residence to Finland and enquired whether she would continue to receive parental benefit after that change of residence. On 1 July 1994 Mrs Kuusijärvi established her residence in Finland but did not work there.

7 Mrs Kuusijärvi's application to continue to draw parental benefit after moving to Finland was rejected by Norrbottens läns allmänna försäkringskassa (social insurance office for Norrbotten County) on the grounds that she had left Sweden on 1 July 1994 to establish her residence in Finland and had been removed from the Swedish social security register on 2 July 1994.

8 Under Article 3 of Chapter 1 of the Law Swedish citizens and non-Swedish nationals residing in the territory of the Kingdom are to be insured. An insured person who leaves Sweden continues to be regarded as resident in Sweden if the stay abroad is not intended to exceed one year.

9 Under Article 4 of Chapter 1 of the Law every person insured pursuant to the Law is to be registered with a general social insurance office with effect from the month in which he reaches the age of 16 years provided that he is resident in the territory of the Kingdom and, under Article 5, the general social insurance office must remove the insured person from its register once it receives notice that that person is no longer to appear on its register.

10 As regards the condition of residence in the territory of the Kingdom, Riksförsäkringsverket föreskrifter (RFFS 1985: 16) om inskrivning och avregistrering hos allmän försäkringskassa (Instructions concerning registration and deregistration with a general social insurance office) state that a person is regarded as resident in Sweden if he has his actual place of residence there or if he goes to Sweden with the intention of either permanently residing there or staying there for more than one year to work or study. Moreover, a person who is entitled to benefits under Swedish legislation on the basis of Regulation No 1408/71 is deemed to be resident in Sweden for so long as he is entitled to such benefits, even though he does not fulfil the abovementioned conditions for residence.

11 The Instructions issued by the National Social Security Board also state that, if the insured person transfers his residence to another Nordic country with the intention of staying there for more than one year, he is to be removed from the social insurance register with effect from the day on which he is removed from the national population register in Sweden. However, where a person covered by Regulation No 1408/71 moves to another Member State, he is to be removed from the register of the social security office as soon as he becomes subject, in accordance with that regulation, to the legislation of the host State, even if he intends to stay there for less than one year.

12 The Länsrätt (Administrative Court), Norbotten, dismissed the appeal lodged by Mrs Kuusijärvi against the decision refusing to continue payment of the benefit at issue after the transfer of her residence to Finland and her removal from the register of the Swedish social security office. Mrs Kuusijärvi thereupon appealed to the Kammarrätt in Sundsvall.

13 Before that court Mrs Kuusijärvi relied on Article 22(1)(b)(ii) of Regulation No 1408/71, which provides:

'1. An employed or self-employed person who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, and:

...

(b) who, having become entitled to benefits chargeable to the competent institution, is authorised by that institution to return to the territory of the Member State where he resides, or to transfer his residence to the territory of another Member State;

...

shall be entitled:

...

(ii) to cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. ...'

14 Mrs Kuusijärvi submitted that, by virtue of that provision, she was entitled, in the case of maternity, to the continued payment of cash benefits in the form of parental benefit, even after her move to Finland, for the same period of entitlement as applies to persons residing in Sweden.

15 The Swedish Social Security Board which, in its capacity as a body governed by public law, was joined as defendant before the national court, contended that Mrs Kuusijärvi had ceased to be entitled to payment of maternity benefits under the Swedish Law owing to the fact that, following the transfer of her residence to Finland, she no longer fulfilled the condition of residence in Sweden, with the result that the Swedish legislation no longer applied to her.

16 The Swedish Social Security Board referred in that connection first to Article 13(2)(f) of Regulation No 1408/71, as inserted by Regulation No 2195/91, which provides that '[a] person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the aforegoing subparagraphs

or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone', and, secondly, to Article 10b of Regulation No 574/72, as also inserted by Regulation No 2195/91, according to which '[the] date and conditions on which the legislation of a Member State ceases to be applicable to a person referred to in Article 13(2)(f) of the Regulation shall be determined in accordance with that legislation'.

17 Taking the view that, in order to resolve the dispute before it, it was necessary to interpret certain provisions of Regulations Nos 1408/71 and 574/72, the national court decided to stay proceedings and refer to the Court the following questions for a preliminary ruling:

'(1) Does Regulation (EEC) No 1408/71 apply at all to a person who, before the regulation became applicable in Sweden, moved from Finland to Sweden and took up employment here, but who was not in employment in Sweden when the regulation came into force in Sweden and did not come here as an unemployed person after the regulation became applicable in Sweden, but only stayed here at that time as an unemployed person after a previous period of employment and then drew Swedish unemployment benefit? That is to say, can a person in that situation claim that, after 1 January 1994, on the basis of Regulation No 1408/71, he or she is covered by Swedish legislation as regards entitlement to Swedish social security benefits in the form of parental benefit?

If that question is answered in the affirmative, the following questions also need to be answered:

(2) Is Article 13(2)(f) of Regulation No 1408/71, in conjunction with Article 10b of Regulation No 574/72, to be understood as meaning that a Member State is

not precluded from introducing a condition of residence in its territory in order for a person who has ceased working there to remain covered by that country's legislation as regards cash maternity benefits?

(3) Is Article 22 of Regulation No 1408/71 to be understood as meaning that, if a person begins to draw cash maternity benefits in a competent state, that person retains entitlement, on the conditions applying according to that article, to those cash benefits when moving to another Member State only on condition that the person concerned satisfies all the provisions of the legislation applied by the competent country, that is to say including the requirement, laid down in those provisions, that the person concerned must be resident in its territory, *or* is Article 22 to be interpreted as meaning that such entitlement exists so long as the person concerned fulfils all other conditions of the national legislation of the country which he or she leaves, apart from the residence requirement?'

The first question

18 By its first question the national court is essentially asking whether Regulation No 1408/71 applies to a person who, when that regulation entered into force in a Member State, was residing in that State as an unemployed person, having previously been in employment there, and who, by reason of that employment, was receiving unemployment benefit under the social security scheme of that Member State.

19 The personal scope of Regulation No 1408/71 is defined in Article 2 thereof. Under paragraph 1 of that article, the regulation applies to employed or self-employed persons who are or have been subject to the legislation of one or more Member States.

20 The terms 'employed person' and 'self-employed person' used in Article 2(1) of Regulation No 1408/71 are defined by Article 1(a). They designate any person insured under one of the social security schemes mentioned in Article 1(a) for the contingencies and under the conditions mentioned in that provision (Case C-2/89 *Kits van Heijningen* [1990] ECR I-1755, paragraph 9 and Joined Cases C-4/95 and C-5/95 *Stöber and Piosa Pereira* [1997] ECR I-511, paragraph 27).

21 Accordingly, as the Court has pointed out, particularly in its judgment of 12 May 1998 in Case C-85/96 *Martínez Sala* [1998] ECR I-2691, paragraph 36, a person has the status of an employed person within the meaning of Regulation No 1408/71 where he is covered, even if only in respect of a single risk, on a compulsory or optional basis, by a general or special social security scheme mentioned in Article 1(a) of Regulation No 1408/71, irrespective of the existence of an employment relationship.

22 That is certainly the situation in the case of a person who is unemployed in a Member State and is in receipt there of unemployment benefits under the legislation of that Member State.

23 The fact that such a person was already unemployed on the date on which Regulation No 1408/71 entered into force in the Member State in question and was receiving unemployment benefits on the basis of his employment there before that date is not such as to bring him outside the personal scope of the regulation.

24 Article 94(3) of Regulation No 1408/71 expressly provides that a right is to be acquired under that regulation even though it relates to a contingency which materialised prior to the date of application of that regulation in the territory of the Member State concerned.

25 Similarly, Article 94(2) of Regulation No 1408/71 provides that all periods of insurance and, where appropriate, all periods of employment or residence completed under the legislation of a Member State before the date of its application in the territory of that Member State are to be taken into consideration for the determination of rights acquired under the provisions of the regulation.

26 In light of the foregoing considerations, the reply to the first question must be that Regulation No 1408/71 applies to a person who, on the entry into force of that regulation in a Member State, was residing in that State as an unemployed person, having previously been in employment there, and who, by reason of that employment, was receiving unemployment benefit under the social security scheme of that Member State.

The second question

27 By its second question the national court is essentially asking whether Article 13(2)(f) of Regulation No 1408/71, as inserted by Regulation No 2195/91, precludes the legislation of a Member State from making the right of a person who has ceased all occupational activity in its territory to remain covered by its legislation dependent on his continued residence there.

28 In that connection it should be pointed out that the provisions of Title II of Regulation No 1408/71, of which Article 13 forms part, constitute a complete and uniform system of conflict rules. Those provisions are intended not only to prevent the concurrent application of a number of national legislative systems and the complications which might ensue, but also to ensure that persons covered by Regulation No 1408/71 are not left without social security cover because there is no legislation which is applicable to them (see, in particular, *Kits van Heijningen*, cited above, paragraph 12).

29 It should next be emphasised that the sole purpose of Article 13(2) of Regulation No 1408/71 is to determine the national legislation applicable to persons who are in one of the situations referred to in subparagraphs (a) to (f) of that provision. As such, the provision is not intended to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch of such a scheme. As the Court has pointed out on several occasions, it is for the legislature of each Member State to lay down those conditions (see, to that effect, *Kits van Heijningen*, cited above, paragraph 19, and Case C-245/88 *Daalmeijer* [1991] ECR I-555, paragraph 15).

30 Admittedly, when the Member States lay down the conditions creating the right or the obligation to become affiliated to a social security scheme, they are under an obligation to comply with the provisions of the Community law in force and, in particular, may not exclude from the scope of the legislation at issue persons to whom it applies pursuant to Regulation No 1408/71 (*Kits van Heijningen*, cited above, paragraph 20).

31 Thus, in its judgment in *Kits van Heijningen*, cited above, at paragraph 21, the Court held that if the legislation of a Member State made affiliation to the insurance scheme which it establishes of a person employed in its territory conditional upon his residing there, Article 13(2)(a) of Regulation No 1408/71, which provides that a person employed in the territory of one Member State is to be subject to the legislation of that State, even if he resides in the territory of another Member State, would be deprived of all practical effect.

32 However, the fact that the legislation of a Member State makes the right of a person who has ceased all occupational activity in its territory, and who thus no longer satisfies the conditions laid down in Article 13(2)(a) of Regulation No 1408/71, to be or to remain affiliated to that Member State's social security scheme conditional upon his residing in its territory is not such as to deprive

Article 13(2)(f) of the regulation of its practical effect or to exclude that person from the application of all social security legislation, in particular that applicable by virtue of Regulation No 1408/71.

33 On the contrary, Article 13(2)(f) is specifically intended to govern such a situation and, to that end, in the case of a person who is no longer subject to any legislation applicable by virtue of the other provisions of Article 13(2), including subparagraph (a), or of the provisions of Articles 14 to 17 of Regulation No 1408/71, declares applicable to that person the legislation of the Member State in whose territory he resides.

34 Accordingly, a person who has ceased all employment in the territory of a Member State and thus no longer satisfies the conditions laid down in Article 13(2)(a) and who, moreover, does not satisfy the conditions laid down in any other provision of Regulation No 1408/71 for the legislation of a Member State to be applicable to him is subject, by virtue of Article 13(2)(f) and in accordance with the legislation of the State in whose territory he resides, either to the legislation of the State in which he was previously employed, if he continues to reside there, or to that of the State to which, if such be the case, he has transferred his residence.

35 However, the Swedish and Norwegian Governments contend that Article 13(2)(f) of Regulation No 1408/71 applies only if the person concerned who has transferred his residence to another Member State has definitively ceased all occupational activity. In their submission, a person who has only temporarily ceased to work remains subject, by virtue of Article 13(2)(a), to the legislation of the Member State where he was last employed, even if he has established his residence in another Member State.

36 Both governments refer in that connection to the judgment in Case 302/84 *Ten Holder* [1986] ECR 1821 in which the Court ruled that Article 13(2)(a) of Regulation No 1408/71 must be interpreted as meaning that a worker who has ceased to carry on an activity in the territory of a Member State and has not gone to work in the territory of another Member State continues to be subject to the legislation of

the Member State in which he was last employed, regardless of the length of time which has elapsed since the termination of the activity in question and the end of the employment relationship. They add that it follows *inter alia* from the judgment in Case C-140/88 *Noij* [1991] ECR I-387, paragraphs 9 and 10, that only workers who have definitively ceased all occupational activity are outside the scope of Article 13(2)(a) of Regulation No 1408/71 (see, to that effect, Case C-215/90 *Twomey* [1992] ECR I-1823, paragraph 10).

37 The Netherlands Government and, at the hearing, the Finnish Government have submitted that Article 13(2)(f) of Regulation No 1408/71 lays down an express conflict rule which applies to situations such as those in point in the main proceedings where, for whatever reason, a person has ceased all occupational activity in a given Member State and resides in another Member State without working there, and has thereby rendered obsolete the line of case-law beginning with the judgment in *Ten Holder*, cited above.

38 The Commission, for its part, considers that that case-law remains valid and that Article 13(2)(f) of Regulation No 1408/71 is applicable only from the date of expiry of entitlement to a benefit in the State in which the person concerned was last employed, save where he has definitively ceased all occupational activity.

39 On this point it should first be stated that there is nothing in the wording of Article 13(2)(f) of Regulation No 1408/71 to suggest that that provision applies only to workers who have definitively ceased all occupational activity and not to persons who have merely ceased their occupational activity in a given Member State.

40 On the contrary, that provision is couched in general terms so as to cover any situation in which the legislation of a Member State ceases to be applicable to a

person, for whatever reason, and not only because the person concerned has ceased his occupational activity, be it definitively or temporarily, in a given Member State.

41 To restrict the application of Article 13(2)(f) of Regulation No 1408/71 to the situation where all occupational activity has definitively ceased would thus amount to depriving that provision of part of its substance.

42 It should next be noted that, according to the third recital in the preamble to Regulation No 2195/91, Article 13(2)(f) was inserted into Regulation No 1408/71 following the judgment in *Ten Holder*, cited above.

43 That judgment concerned the situation of a person who had ceased her occupational activities in the territory of a Member State, was drawing sickness benefits there under the legislation of that Member State and went to reside in the territory of another Member State without taking up an activity there while she was in receipt of those sickness benefits; it did not appear that she had definitively ceased all occupational activity or that she was not going to take up such activity in her new State of residence.

44 Although no provision of Title II of Regulation No 1408/71 expressly governed that situation, the Court held in *Ten Holder*, cited above, that a person in that situation continued to be subject, under Article 13(2)(a), to the legislation of the Member State in which he was last employed.

45 In those circumstances, it must be recognised that, by inserting subparagraph (f) into Article 13(2) of Regulation No 1408/71, the Community legislature sought to make express provision for the case of a person in such a situation.

46 As Advocate General Jacobs pointed out at paragraph 56 of his Opinion, this is, moreover, borne out by the explanatory memorandum on the Commission's proposal for an amendment which led to the adoption of Article 13(2)(f). According to that explanatory memorandum, the intention was to fill in the 'gap' in Title II of Regulation No 1408/71 which the judgment in *Ten Holder*, cited above, had revealed and which was attributable to the fact that '[t]here [was] ... no specific provision determining what legislation is applicable to persons who have ceased to engage in any occupational activity under the legislation of one Member State and who reside in the territory of another Member State'.

47 Confirmation of the foregoing interpretation may, moreover, be found in another, parallel, amendment which the Community legislature made to the relevant rules and which, according to the third recital in the preamble to Regulation No 2195/91, is closely linked to the adoption of Article 13(2)(f).

48 According to that recital, the insertion into Regulation No 1408/71 of Article 13(2)(f) entailed adapting Article 17, which allows one or more Member States, the competent authorities of those States or bodies designated by those authorities, to provide by common accord for exceptions to the provisions of Articles 13 to 16.

49 Following that adaptation, such exceptions may now be decided upon not only in the interest of persons pursuing an activity on an employed or self-employed basis but also in the interest of all persons without distinction, whether or not they are pursuing such an activity.

50 It follows from all the foregoing considerations that Article 13(2)(f) of Regulation No 1408/71, on the one hand, applies to a person who has ceased his occupational activities in one Member State and has transferred his residence to another Member State and, on the other hand, does not preclude the legislation of a

Member State from making affiliation to a social security scheme of that Member State subject to a residence requirement.

51 The reply to the second question must therefore be that Article 13(2)(f) of Regulation No 1408/71, as inserted by Regulation No 2195/91, does not preclude the legislation of a Member State from making the right of a person who has ceased all occupational activity in that State to remain subject to its legislation dependent on his continued residence there.

The third question

52 By its third question the national court is essentially asking whether Article 22 of Regulation No 1408/71 precludes the legislation of a Member State from providing that a person who has ceased all occupational activity in its territory loses the right to continued payment of a parental benefit, such as that at issue in the main proceedings, on the ground that he has transferred his residence to another Member State.

53 It must first be noted that Article 22 forms part of Chapter 1, entitled 'Sickness and Maternity', of Title III of Regulation No 1408/71 and that its application presupposes, therefore, that the parental benefit at issue in the main proceedings constitutes a sickness or maternity benefit within the meaning of that chapter.

54 It should next be pointed out that, as stated in paragraph 5 of this judgment, when Regulation No 1408/71 entered into force on Swedish territory, the Swedish Government had, pursuant to Article 5 of that regulation, notified the parental benefit as a maternity benefit.

55 In its observations before the Court the Swedish Government submitted, however, that, in view of the Court's judgment of 10 October 1996 in Joined Cases C-245/94 and C-312/94 *Hoever and Zachow* v *Land Nordrhein-Westfalen* [1996] ECR I-4895, the benefits at issue in the main proceedings had thenceforth to be regarded as family benefits within the meaning of Regulation No 1408/71.

56 In those circumstances, in order to provide the national court with a helpful answer, the parental benefits at issue in the main proceedings should be classified for the purposes of Regulation No 1408/71.

57 The Court has consistently held that a benefit may be regarded as a social security benefit for the purposes of Regulation No 1408/71 where it is granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and provided that it concerns one of the risks expressly listed in Article 4(1) of Regulation No 1408/71 (judgment of 5 March 1998 in Case C-160/96 *Molenaar* [1998] ECR I-843, paragraph 20).

58 As regards the first of those two conditions, it is not disputed that the provisions concerning the grant of parental benefits confer a legally defined right on recipients and that that benefit is awarded to persons who satisfy certain objective criteria, without any individual and discretionary assessment of their personal needs.

59 As regards the second condition, it should be borne in mind that according to Article 1(u)(i) of Regulation No 1408/71 'the term *family benefits* means all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4(1)(h), excluding the special childbirth allowances mentioned in Annex II'.

60 It follows from the judgment in *Hoever and Zachow*, cited above, that a benefit intended to enable one of the parents to devote himself or herself to the raising of a young child, and designed, more specifically, to remunerate the service of bringing up a child, to meet the other costs of caring for and raising a child and, as the case may be, to mitigate the financial disadvantages entailed in giving up income from an occupational activity, must be treated as a family benefit within the meaning of Articles 1(u)(i) and 4(1)(h) of Regulation No 1408/71.

61 It is clear from the file that the parental benefit at issue in the main proceedings satisfies those criteria.

62 That benefit, which is paid by reason of the birth of a child, is paid to the parents jointly for a maximum total period of 450 days, during which one of the parents has the right not to work. This applies until the child has reached the age of eight years or the end of its first school year, whichever is later. Where the parents have joint care of the child, each of them is eligible for the benefit for one half of the period prescribed for its payment. A parent who has sole care of the child may receive parental benefit for the whole of that period.

63 Although it is true that the mother is eligible for parental benefit with effect from the 60th day before the day on which the child is due to be born, it is nevertheless the case, therefore, that during by far the greater part of the period for which parental benefit is payable, the right to that benefit belongs to the parent who primarily has care of the child; that right may therefore also accrue to the father.

64 Moreover, the amount of benefit is, subject to certain conditions and reservations, directly determined by the amount of the earned income of the parent concerned. Provided that the parent concerned was affiliated to a social insurance office for at least 240 consecutive days before the birth or the due date of the birth, that parent is entitled, for 360 of the 450 days during which parental benefit is payable, to an

allowance in a sum which is greater than the minimum guaranteed amount of SKR 60 per day and is generally equivalent to 75% of the income which he or she previously earned.

65 Those detailed rules show that parental benefit is intended, on the one hand, to enable the parents to devote themselves, in alternation, to the care of the young child until that child has started to attend school and, on the other, to offset to some extent the loss of income entailed for the parent devoting himself or herself to the care of the child in temporarily giving up his or her occupational activity.

66 In light of the foregoing, reference must be made to the provisions specific to family benefits which form Chapter 7 of Title III of Regulation No 1408/71 in order to determine whether a person in a situation such as that of Mrs Kuusijärvi is entitled to continue to receive the parental benefit which has been paid to her under the legislation of a Member State, even after she has ceased all occupational activity in the territory of that State and has transferred her residence to another Member State.

67 In that connection, it should be observed that Article 73 of Regulation No 1408/71, as amended by Council Regulation (EEC) No 3427/89 of 30 October 1989 (OJ 1989 L 331, p. 1), provides: 'An employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI.'

68 As the Court held in its judgment in Case 101/83 *Raad van Arbeid* v *Brusse* [1984] ECR 2223, paragraph 30, that article creates, in favour of a worker who is subject to the legislation of a Member State other than the State in whose territory the members of his family reside, a real entitlement to the family benefits provided for by the applicable legislation. That entitlement cannot be defeated by the

application of a provision of that legislation by virtue of which persons not residing in the territory of the Member State in question are not to receive family benefits.

69 In accordance with the case-law of the Court (see Case 104/80 *Beeck* [1981] ECR 503, paragraphs 7 and 8, Case C-78/91 *Hughes* [1992] ECR I-4839, paragraph 28, and *Hoever and Zachow*, cited above, paragraph 38), that provision is also applicable to a worker who lives with his family in a Member State other than the one whose legislation is applicable to him.

70 The same is true of Article 74 of Regulation No 1408/71, as amended by Regulation No 3427/89, which applies the rule laid down in Article 73 to an unemployed person who was formerly employed or self-employed and who draws unemployment benefit under the legislation of a Member State.

71 A person in a situation such as that of the applicant in the main proceedings, however, clearly does not fulfil the conditions either of Article 73 or of Article 74 of Regulation No 1408/71, inasmuch as neither that person nor the members of his family have ever resided in a Member State other than the one whose legislation was applicable to him. That is so in particular by reason of the fact that, under Article 13(2)(f) of Regulation No 1408/71, a person in such a situation is subject, after transferring his residence to another Member State, to the legislation of that Member State, as is to be seen by the reply to the second question.

72 It is also important to note that Article 10 of Regulation No 1408/71, which provides that certain benefits acquired under the legislation of one or more Member States may not be the subject of any withdrawal by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated, applies only to the benefits expressly mentioned therein, which do not include family benefits.

73 In light of the foregoing considerations, the reply to the third question must be that Regulation No 1408/71 does not preclude the legislation of a Member State from providing that a person who has ceased all occupational activity in its territory loses the right to continued payment of family benefits paid under that legislation on the ground that he has transferred his residence to another Member State where he lives with the members of his family.

Costs

74 The costs incurred by the Swedish, Netherlands, Finnish and Norwegian 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 (Sixth Chamber),

in answer to the questions referred to it by the Kammarrätt, Sundsvall, by order of 6 August 1996, hereby rules:

1. 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 to a person who, on the entry into force of that regulation in a Member State, was residing in that State as an unemployed person, having previously been in employment there, and who, by reason of that employment, was

receiving unemployment benefit under the social security scheme of that Member State.

2. **Article 13(2)(f) of Regulation No 1408/71, as inserted by Council Regulation (EEC) No 2195/91 of 25 June 1991, does not preclude the legislation of a Member State from making the right of a person who has ceased all occupational activity in its territory to remain subject to its legislation dependent on his continued residence there.**

3. **Regulation No 1408/71 does not preclude the legislation of a Member State from providing that a person who has ceased all occupational activity in its territory loses the right to continue to receive family benefits paid under that legislation on the ground that he has transferred his residence to another Member State where he lives with the members of his family.**

Ragnemalm Schintgen

Mancini Murray Hirsch

Delivered in open court in Luxembourg on 11 June 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber