JUDGMENT OF THE COURT (Second Chamber)
27 March 1985 *

In Case 122/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail [Labour Tribunal], Nivelles (Second Chamber), for a preliminary ruling in the action pending before that court between

Kenneth Scrivner and Carol Cole, residing at Cortil-Noirmont (Belgium),

and

Centre public d'aide sociale de Chastre [Public Social Welfare Centre, Chastre],

on the interpretation of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475),

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: M. Darmon
Registrar: P. Heim

gives the following

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* Language of the Case: French.

** after considering the observations submitted on behalf of
the plaintiff by Mr G. de Kerchove,
the defendant by Mr J. Gillardin,
the Commission of the European Communities by Mr J. Griesmar, acting as Agent,
after hearing the Opinion of the Advocate General delivered at the sitting on 29 November 1984,

JUDGMENT

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

Decision

1 By a judgment of 20 April 1984, which was received at the Court on 11 May 1984, the Tribunal du travail [Labour Tribunal] of Nivelles (Second Chamber) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475), and a question on the compatibility with Community law of a requirement of a certain period of residence before nationals of Member States may be granted a guaranteed income.

2 Those questions were raised in proceedings between Mr and Mrs Scrivner, British nationals resident at Cortil-Noirmont (Belgium), and the Centre public d'aide sociale [Public Social Welfare Centre, hereinafter referred to as 'the Centre'], Chastre, following the refusal of a grant of financial assistance under the scheme for a guaranteed minimum means of subsistence.

3 Mr and Mrs Scrivner settled in Belgium in 1978 together with their six children. Mr Scrivner was employed in Belgium by a number of insurance companies but on 6 June 1982, he left his employment for personal reasons and was then registered as being in search of employment. However, following decisions taken on 15 and 21 December 1982 by the Regional Inspector of Unemployment, he was refused unemployment benefit for July 1982 and for a 16-week period commencing on 20 December 1982.

4 When Mr Scrivner subsequently applied for financial assistance from the Centre, it gave him a number of sums of money but refused to recognize his right and that of his family to the minimum means of subsistence introduced by the Belgian Law of 7 August 1974 (Moniteur belge of 18 September 1974, p. 11363), on the ground that they did not satisfy the requirement of having resided in Belgium for at least

the previous five years as laid down by Article 1 of the Royal Decree of 8 January 1976 (Moniteur belge of 13 January 1976, p. 311), implementing Article 1 (2) of the above-mentioned Law.

5 That provision grants the right to the minimum means of subsistence (hereinafter referred to as the 'minimex') to nationals of Member States of the European Economic Community provided, *inter alia*, that they 'have actually resided in Belgium for at least the five years immediately preceding the date on which the minimum means of subsistence is granted', a requirement to which Belgian nationals are not subject.

6 The Centre later granted Mr Scrivner and his family the 'minimex' from 14 June 1983, taking the view that they had completed five years' residence in Belgium by that date.

7 By application of 26 January 1983, Mr and Mrs Scrivner brought an action before the Tribunal du Travail de Nivelles against the Centre's refusal to recognize their right to the 'minimex' as from 10 December 1982 and claiming that the residence requirement was unlawful owing to the general prohibition of discrimination on grounds of nationality against workers who are nationals of other Member States, contained in the EEC Treaty and in Article 7 (2) of Regulation No 1612/68, which deals with 'social advantages'.

8 The Centre contended before the Tribunal du Travail that the action should be dismissed and, in the alternative, that the disputed question of Community law should be referred to the Court of Justice of the European Communities. The Tribunal du Travail referred to the questions submitted to the Court by the Arbeidsrechtbank of Antwerp by judgment of 28 October 1983 in Case 249/83 and itself put the following questions to the Court:

'(1) Does the "minimum means of subsistence" provided under the Belgian Law of 7 August 1984 (Moniteur belge, 18 September) constitute a "social advantage" within the meaning of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community?

(2) As a subsidiary question, does the requirement as to length of residence, laid down for nationals of EEC Member States by the Royal Decree of 8 January 1976 (Moniteur belge, 13 January) as a condition of obtaining the minimum means of subsistence, conflict with the Treaty of Rome or with the Community rules?'

9 Mr and Mrs Scrivner, the Centre, and the Commission of the European Communities have lodged written observations with the Court.

10 Mr and Mrs Scrivner argue that the 'minimex' should be governed by the principle of equality of treatment laid down by Article 3 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 (Official Journal, English Special Edition 1971 (II), p. 416). They contend that the 'minimex' should be regarded as a hybrid benefit having both the characteristics of a social assistance benefit (such as making the claimant's state of need one of the essential criteria for its grant) and those of a social security benefit (such as requiring the claimant to be prepared to accept work and placing him in a legally defined position). The Court has treated similar hybrid schemes, such as a handicapped persons' allowance and a guaranteed income for old people, as social security schemes, and made them subject to the principle of equal treatment.

11 The Centre, however, maintains that a benefit like the 'minimex' introduced by the Belgian Law of 7 August 1974 does not fall within the ambit of social security but is a social assistance measure outside the scope of Article 51 of the EEC Treaty and of Regulations Nos 1408/71 and 1612/68 because entitlement to a 'minimex' is independent of any concept of, or reference to, work. The grant of the 'minimex' depends only on the claimant's state of need and there is no requirement that he should have previously paid contributions in order to qualify for it or that he should show that he is affiliated to any particular body. The sole reason for the introduction of the 'minimex' was to implement a specific policy for the destitute with a view to their better integration into society, and it is therefore a measure to safeguard human dignity adopted pursuant to Article 2 of the European Convention on Human Rights.

12 With reference more specifically to the prohibition of discrimination contained in Article 3 of Regulation No 1408/71, the Centre remarks that that principle is applicable to workers alone whereas the right to the 'minimex' is not dependent on any previous period of work. The fact that claimants for the 'minimex' are required to make an express declaration that they would be prepared to accept work merely means that they must declare their intention to find a way out of their state of need as soon as possible.

13 The Centre cites in argument certain judgments of the Court, in particular its judgment in Case 1/72 (*Frilli* v *Belgian State* [1972] ECR 457), and two proposals for a directive on a right of residence for nationals of Member States in the territory of another Member State (Official Journal 1979, C 207, p. 14, and Official Journal 1980, C 188, p. 7) submitted by the Commission to the Council with a view to facilitating and ensuring the greatest possible freedom of movement for workers between the Member States, which state that the host Member State may make the right of entry and residence of nationals of another Member State subject to economic conditions.

14 The Commission also considers that the principle of non-discrimination contained in Article 3 of Regulation No 1408/71 is not applicable to this case because the 'minimex' is not a social security benefit. It argues that the Court has never accepted that hybrid benefits always fall within the scope of that regulation and has held only that they do so in cases where they relate, if only in a supplementary manner, to risks actually covered by the schemes listed in Article 4 of the regulation. In this case, the sole purpose of the 'minimex' is to provide the least well-off with a minimum means of subsistence; it does not relate to any of the specific risks defined in that article and therefore differs from the guaranteed income for old people which was considered in the *Frilli* judgment.

15 The Commission takes the view that the 'minimex' falls instead within the category of social advantages referred to in Article 7 of Regulation No 1612/68 which should not be given a restrictive meaning but includes all advantages, whether or not linked to a contract of employment.

16 In order to answer Question (1), it is necessary first to examine whether a benefit such as that provided for by the Belgian Law of 7 August 1974 falls within the material scope of Regulation No 1408/71 as defined by Article 4 (1) and (2); whether or not it should be described as a 'social advantage' within the meaning of Article 7 of Regulation No 1612/68 falls to be considered only if it is established that the benefit is not a social security benefit for the purposes of Regulation No 1408/71.

17 It should be pointed out that under Article 4 (1) of Regulation No 1408/71, the regulation applies to all legislation of the Member States concerning the branches of social security listed in subparagraphs (a) to (h), whereas Article 4 (4) states that the regulation is not to apply, for example, to 'social and medical assistance'.

18 The Court has stated in a number of decisions that the distinction between benefits which are excluded from the scope of Regulation No 1408/71 and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purpose and the conditions for its grant, and not on whether the national legislation describes the benefit as a social security benefit or not.

19 Although it is possible that because of the classes of persons to which they apply, their objectives and the detailed rules for their application, certain laws may simultaneously contain elements belonging to both of the categories mentioned and thus defy any general classification, it must be stated that in order to fall within the field of social security covered by Regulation No 1408/71 the legislation at issue must in any event satisfy, in particular, the condition of covering one of the risks specified in Article 4 (1) of the regulation. It follows that the list of risks contained in that paragraph is exhaustive and that, as a result, a branch of social security not mentioned in the list does not fall within that category even if it confers upon individuals a legally defined position entitling them to benefits.

20 As is clear from documents before the Court, the 'minimex' is characterized on the one hand by the fact that it confers upon recipients a legally defined position and on the other by the fact that it is granted to any person who does not have

adequate means and is unable to 'obtain them either by his own efforts or in any other way' (Article 1 (1) of the Law of 7 August 1974); it thus adopts need as an essential criterion for its application and does not make any stipulations as to periods of work, contribution or affiliation to any particular social security body covering a specific risk. A claimant need only show that 'he is prepared to accept work' unless prevented by his state of health or compelling social reasons; furthermore, he is required to exercise his rights to social benefits or even any rights to maintenance if the public social welfare centre considers it necessary (Article 6 (1) and (2) of the 1974 Law).

21 It follows that an allowance like the one at issue, being a general social benefit, cannot be classified under one of the branches of social security listed in Article 4 (1) of Regulation No 1408/71 and therefore does not constitute a social security benefit within the specific meaning of that regulation.

22 It should then be examined whether such entitlement may be regarded as a social advantage within the meaning of Regulation No. 1612/68, to which Question (1) submitted to the Court specifically refers.

23 Paragraphs (1) and (2) of Article 7 of that regulation read as follows:

'(1) A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.

(2) He shall enjoy the same social and tax advantages as national workers.'

24 As the Court has stated in a number of decisions, it follows from that regulation as a whole and from the objective pursued that the advantages which that regulation extends to workers who are nationals of other Member States are all those which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue

of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community.

25 For instance, the Court adopted that reasoning in its judgment of 12 July 1984 (Case 261/83 *Castelli* v *ONPTS* [1984] ECR 3199) in which it held that the concept of social advantages within the meaning of Article 7 (2) of Regulation No 1612/68 includes the grant of the income guaranteed to old people by the legislation of a Member State to a worker's dependent relatives in the ascending line.

26 It follows from all the foregoing considerations that a benefit guaranteeing a 'minimum means of subsistence' constitutes a social advantage within the meaning of Regulation No 1612/68 of the Council, which may not be denied to a migrant worker who is a national of another Member State and is resident within the territory of the State paying the benefit, nor to his family.

27 It must therefore be stated in answer to Question (1) that a social benefit guaranteeing a minimum means of subsistence in a general manner constitutes a social advantage within the meaning of Regulation No 1612/68 of the Council of 15 October 1968.

28 As Question (2) was only put in the event of the answer to Question (1) being in the negative, it does not call for a reply.

Costs

29 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions submitted to it by the Tribunal du Travail of Nivelles by judgment of 20 April 1984, hereby rules:

A social benefit guaranteeing a minimum means of subsistence in a general manner constitutes a social advantage within the meaning of Regulation (EEC) No 1612/68 of the Council of 15 October 1968.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 27 March 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber