JUDGMENT OF THE COURT (Sixth Chamber)

5 February 2002 *

In Case C-277/99,

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

Doris Kaske

and

Landesgeschäftsstelle des Arbeitsmarktservice Wien,

on the possible application of a convention relating to unemployment insurance concluded between the Federal Republic of Germany and the Republic of Austria on unemployment benefit, in place of Articles 3, 6, 67 and 71 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), by extending the decision in *Rönfeldt* (Case C-227/89 [1991] ECR I-323, hereinafter '*Rönfeldt*') to unemployment benefit and, secondly, the interpretation of Articles 48 and 51 of the EC Treaty (now, after amendment, Articles 39 EC and 42 EC),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, N. Colneric, J.-P. Puissochet (Rapporteur), R. Schintgen and V. Skouris, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Ms Kaske, by F.C. Sladek, Rechtsanwalt,

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

— the Spanish Government, by S. Ortiz Vaamonde, acting as Agent,

— the Portuguese Government, by L. Fernandes and S. Pizarro, acting as Agents,

— the Commission of the European Communities, by P. Hillenkamp and G. Braun, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 October 2001,

gives the following

Judgment

1 By an order of 29 June 1999, lodged at the Court on 26 July 1999, the Verwaltungsgerichtshof (Administrative Court) (Austria) referred for a preliminary ruling under Article 234 EC four questions on, firstly, the possible application of a convention relating to unemployment insurance concluded between the Federal Republic of Germany and the Republic of Austria (hereinafter 'the Austro-German Convention') in place of Articles 3, 6, 67 and 71 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), by extending the decision in *Rönfeldt* (Case C-277/89 [1991] ECR I-323) to unemployment benefit and, secondly, the interpretation of Articles 48 and 51 of the EC Treaty (now, after amendment, Articles 39 EC and 42 EC).

2 Those questions were raised in appeal proceedings brought by Ms Kaske against a decision of 28 November 1996 by which the Landesgeschäftsstelle des Arbeitsmarktservice Wien (regional bureau of the Vienna Labour and Employment Office), pursuant to a resolution of the Ausschuss für Leistungsangelegenheiten (Benefits Agency), rejected her application for unemployment benefit on the basis of Article 14(5) of the Arbeitslosenversicherungsgesetz (Law on unemployment insurance, hereinafter the 'AlVG').

Community law

3 Regulation No 1408/71 entered into force in regard to the Republic of Austria upon Austria's accession to the European Economic area on 1 January 1994.

4 Article 3(1) of Regulation No 1408/71 provides:

'Subject to the special provisions of this regulation, persons resident in the territory of one of the Member States to whom this regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.'

5 Article 6 of Regulation No 1408/71 provides:

'Subject to the provisions of Articles 7, 8 and 46(4) this regulation shall, as regards persons and matters which it covers, replace the provisions of any social security convention binding either:

(a) two or more Member States exclusively ...'.

6 Article 67 of Regulation No 1408/71, entitled 'Aggregation of periods of insurance or employment', provides as follows:

'1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of insurance periods shall take into account, to the extent necessary, periods of insurance or employment completed under the legislation of any other Member State, as though they were periods completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as insurance periods had they been completed under that legislation.

2. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of employment shall take into account, to the extent necessary, periods of insurance or employment completed under the legislation of any other Member State, as though they were periods of employment completed under the legislation which it administers.

3. Except in the cases referred to in Article 71(1)(a)(ii) and (b)(ii), application of the provisions of paragraphs 1 and 2 shall be subject to the condition that the person concerned should have completed lastly:

— in the case of paragraph 1, periods of insurance,

— in the case of paragraph 2, periods of employment,

in accordance with the provisions of the legislation under which the benefits are claimed.

4. Where the length of the period during which benefits may be granted depends on the length of periods of insurance or employment, the provisions of paragraph 1 or 2 shall apply, as appropriate.'

7 Article 71 of Regulation No 1408/71 provides:

'1. An unemployed person who, during his last employment, was residing in the territory of a Member State other the competent State shall receive benefits in accordance with the following provisions:

...

(b) ...

(ii) a worker, other than a frontier worker, who is wholly unemployed and who makes himself available for work to the employment services in the territory of the Member State in which he resides, or who returns to that territory, 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. However, if such worker has become entitled to benefits at the expense of the competent institution of the Member State to whose legislation he was last subject, he shall receive benefits under the provisions of Article 69. Receipt of benefits under the legislation of the State in which he resides shall 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'.

National law

8 Paragraph 14 of the AlVG provides:

'*Acquisition of the right*

1. A right to unemployment insurance is acquired for the first time when the unemployed person has been employed in a job subject to compulsory unemployment insurance in Austria for a total of 52 weeks in the last 24 months before bringing the claim (the reference period).

...

5. Periods of employment or insurance completed abroad shall be taken into account for acquisition of the right in so far as this is governed by conventions between States or international treaties. When thus taking account of periods of employment or insurance abroad, completion of a minimum period of employment in Austria before making the claim for unemployment benefit is not required if the unemployed person

1. has resided or habitually stayed in Austria for a total of at least 15 years before his last employment abroad, or

2. has moved to Austria for the purpose of reuniting a family and his spouse is resident or habitually resident in Austria for a total of at least 15 years,

and in either case registers as unemployed in Austria within three months of the end of the employment or the insurance obligation abroad.

6. In order to determine when the right was acquired, the periods mentioned in subparagraphs 4 and 5 shall be taken into account once only.'

The Austro-German Convention

9 The Austro-German Convention entered into force on 1 October 1979 and is still applicable. Article 7 of the Convention provides:

'Inclusion of periods of employment subject to compulsory contributions completed in accordance with the legislation of the other contracting State

(1) Periods of employment subject to compulsory contributions which have been completed in accordance with the legislation of the other contracting State shall be taken into account when assessing whether the qualifying period for acquisition of the right has been completed and when determining the duration of entitlement, where the claimant possesses the nationality of the contracting State in which the claim is made and has his habitual place of stay in the territory of that contracting State. The same applies if the claimant has moved to the contracting State in which the claim is made for the purpose of reuniting a family and his spouse already living there possesses the nationality of that contracting State.

(2) For other unemployed persons, periods of employment subject to compulsory contributions which have been completed in accordance with the legislation of the other contracting State shall be taken into account only if the unemployed person, after he last entered the territory of the contracting State in which he makes the claim, has been employed there for at least four weeks without infringing the provisions on the employment of foreigners.'

The main proceedings and the questions referred

10 Ms Kaske, a German national by birth, has also been an Austrian national since 1968. From 1972 to 31 December 1982 she was an employee in Austria subject to compulsory pension, sickness, accident and unemployment insurance. In 1983 she moved to Germany, where she was an employee until April 1995 and made, *inter alia*, unemployment insurance contributions. She was in receipt of unemployment benefit there for the period from 1 May 1995 to 14 February 1996. From 15 February 1996 to 31 May 1996 she was once more employed subject to compulsory unemployment insurance. She then returned to Austria and on 12 June 1996 applied to the regional bureau of the Arbeitsmarktservice (Labour and Employment Office, hereinafter 'the Office') for unemployment benefit.

11 By decision of 8 August 1996 the Office rejected her application on the ground that she had not completed a period of insurance or employment in Austria immediately prior to making her application for unemployment benefit, as required by Article 67(3) of Regulation No 1408/71. Accordingly, the periods of insurance and/or employment completed in another Member State could not be counted under that regulation. As a result, she had not completed the period necessary to qualify for unemployment benefit.

12 Ms Kaske appealed against that decision of 8 August 1996; her appeal was dismissed as unfounded by a decision of the Office of 28 November 1996. In the grounds for its decision, the authority stated first of all that Ms Kaske did not fall within the scope of Paragraph 14(1) of the AlVG, which it took to apply Article 67 of Regulation No 1408/71, since she was not able to demonstrate that she had completed a period of employment subject to unemployment insurance in Austria during the 24 months prior to making her application. It also ruled out the applicability of Paragraph 14(5) of the AlVG since Ms Kaske had neither resided in Austria for 15 years before the acquisition of the German periods of

insurance, nor moved to Austria for the purpose of reuniting a family. Accordingly, the periods of employment completed abroad could not be taken into account for the purpose of acquisition of the right to unemployment benefit.

13 That decision of 28 November 1996 was challenged before the Verwaltungsgerichtshof. Taking the view that Ms Kaske might be entitled to unemployment benefit if the periods of employment she completed in Germany were taken into account for the purposes of the acquisition by her of a right to such benefit, and that she might be entitled to have those periods credited to her if the provisions of the Austro-German Convention were applied to her, the Verwaltungsgerichtshof decided to refer the following questions to the Court for a preliminary ruling:

'1. Does the Court of Justice's decision in *Rönfeldt* apply also to a case in which a migrant worker has made use of "freedom of movement" (or more precisely, has anticipated it) before the entry into force of Regulation (EEC) No 1408/71, but also before the EC Treaty came into effect in her home State, that is, at a time when she could not yet rely on Article 39 et seq. EC (formerly Article 48 et seq.) in the State of employment?

2. If the answer to Question 1 is affirmative:

Does application of the *Rönfeldt* judgment to the insured risk of unemployment mean that a migrant worker may rely on a legal position more favourable than Regulation No 1408/71 which derives from a bilateral convention between two Member States of the European Union (in this case, the Austro-German Convention on unemployment insurance) for the further duration of each period of exercise of freedom of movement within the meaning of Article 39 et seq. EC (formerly Article 48 et seq.), and thus in particular also for claims which are raised after the return from the State of employment to the home State?

3. If the answer to Question 2 is affirmative:

Must such claims be assessed in accordance with the (more favourable) convention only in so far as they are based on periods of insurance under compulsory unemployment insurance which were acquired before the entry into force of Regulation No 1408/71 in the State of employment (in this case, 1 January 1994)?

4. If the answer to either Question 1 or Question 2 is negative or if the answer to Question 3 is affirmative:

Is it permissible from the point of view of the prohibition of discrimination under Article 39 EC (formerly Article 42 of the EC Treaty) in conjunction with Article 3(1) of Regulation No 1408/71 if a Member State provides in its legal system, as regards the inclusion of periods of insurance completed in another Member State, a provision more favourable than Regulation No 1408/71 (in this case, waiver of the requirement of immediately preceding insurance within the meaning of Article 67(3) of Regulation No 1408/71), but makes its application dependent — apart from the case of reuniting a family — on 15 years' residence in that State before the acquisition of the periods of insurance in the other Member State?'

The first question

14 By its first question the national court is essentially asking whether the principles established by the Court in Case C-227/89 *Rönfeldt* [1991] ECR I-323 permitting

non-application of the provisions of Regulation No 1408/71 to allow for continued application to a worker who is a national of a Member State of a bilateral convention which that regulation would otherwise have replaced, also apply where the worker exercised the right to freedom of movement before the regulation entered into force, and before the Treaty became applicable, in his Member State of origin.

15 The Court held at paragraph 29 of the judgment in *Rönfeldt* that Articles 48 and 51 of the Treaty preclude the loss of social security advantages for workers who have exercised their right to freedom of movement which would result from the inapplicability, following the entry into force of Regulation No 1408/71, of conventions operating between two or more Member States and incorporated in their national law.

16 In the main proceedings, Ms Kaske worked in Austria and then Germany, before becoming unemployed in Germany. She returned to Austria immediately after becoming unemployed, and claims to be entitled to unemployment benefit in her new country of residence, relying *inter alia* on the periods of employment she completed in Germany. She considers that the effect of application of the Austro-German Convention is that those periods may be taken into account under Austrian unemployment legislation, thus entitling her to be paid unemployment benefit by the Austrian authorities.

Admissibility of the questions

17 The Austrian Government argues primarily that it is immaterial to the outcome of the main proceedings whether the periods of employment completed by Ms Kaske in Germany are taken into account, because the total of the periods eligible to be taken into account since her earlier period of unemployment, when she was covered by the German State, came to an end is not sufficient to entitle her to unemployment benefit, owing to the requirements concerning length of

employment laid down by the AlVG. The Austrian Government therefore argues, at least impliedly, that the question whether the Austro-German Convention may be applied to Ms Kaske's situation is immaterial to the outcome of the main proceedings.

18 It should be remembered that it is settled case-law that in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, *inter alia*, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38).

19 The Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to determine whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, the judgment in *PreussenElektra*, cited above, paragraph 39).

20 The questions raised by the national court in this case relate to the interpretation of Community law. The period of employment necessary to establish entitlement to unemployment benefit is a question of domestic law which it is not for the Court to determine. None of the possible reasons for dismissing the question as inadmissible referred to in the preceding paragraph is present in this case.

21 It is therefore necessary to reply to the questions referred.

Substance

22 The Austrian Government argues that the principles laid down in *Rönfeldt* do not apply to Ms Kaske's situation for two reasons. First of all, she has already been subject to application of Regulation No 1408/71 since she received benefit in Germany in respect of an earlier period of unemployment on the basis of that regulation. She therefore falls definitively within the scope of Regulation No 1408/71, since to allow a migrant worker to request application of whichever rule is most favourable whenever he becomes unemployed in his working life would lead to considerable administrative difficulties. Secondly, the Austrian Government argues that the judgment in *Rönfeldt* was delivered in the context of pension rights, which differ significantly from the unemployment benefit at issue in the main proceedings.

23 The Spanish Government also advances that argument. It claims that, unlike retirement and invalidity benefits, to which a national of a Member State may be entitled irrespective of the Member State where the event giving rise to entitlement occurred, the right to unemployment benefit is, under Regulation No 1408/71, subject to the requirement that the last period of insurance or employment was completed in the Member State where the benefit is applied for. That distinction is by no means arbitrary; it is, rather, a consequence of the nature of unemployment benefit, which is undeniably linked to a person's last job and ceases to be payable if he finds a new job.

24 It must first of all be determined whether the principles established in *Rönfeldt* apply to unemployment benefit since that is the benefit at issue in the main proceedings.

25 The Court held at paragraph 21 of the judgment in *Rönfeldt* that the question referred by the national court in that case had to be construed as asking whether the loss of social security advantages which the workers concerned incurred because conventions between Member States had been rendered inoperative by the entry into force of Regulation No 1408/71 was compatible with Articles 48 and 51 of the Treaty. The reply given in that case accordingly relates to all social security advantages covered by Regulation No 1408/71, whether they are acquired once and for all or whether they cover the insured for a temporary period. In that connection it must be observed that, whilst the principles laid down in *Rönfeldt* relate to retirement benefits, which are undoubtedly characterised by immutability, they also apply to invalidity benefits which, like unemployment benefit, can vary and, in certain cases, be temporary (see to that effect Case C-475/93 *Thévenon* [1995] ECR I-3813, paragraphs 2, 26 and 27, and Joined Cases C-31/96, C-32/96 and C-33/96 *Naranjo Arjona and Others* [1997] ECR I-5501, paragraphs 2 and 29). There is therefore no real qualitative difference between those various benefits in terms of their classification in *Rönfeldt* as social security advantages.

26 As regards the main proceedings, the principles established by the Court in *Rönfeldt* imply that an Austrian national who was entitled to benefit from the provisions of the Austro-German Convention, which was concluded before the entry into force in Austria of Regulation No 1408/71, has an established right to continued application of that convention after entry into force of the regulation. In any event, in order to fall within the scope of that convention before the regulation enters into force, he must already have been employed in Germany.

27 The sole purpose of the principles laid down in *Röndfeldt* is to perpetuate entitlement to an established social right not enshrined in Community law at the time when the national of a Member State relying on it enjoyed that right. Accordingly, the fact that Regulation No 1408/71 became applicable in a national's Member State of origin on the date when that Member State acceded to the European Community does not affect his established right to benefit from a bilateral rule which was the only one applicable to him when he exercised his

right to freedom of movement. Indeed, as the Commission maintains, that approach is derived from the notion that the person concerned was entitled to entertain a legitimate expectation that he would benefit from the provisions of the bilateral convention.

28 Accordingly the answer to the first question must be that the principles laid down by the Court in *Rönfeldt* permitting non-application of the provisions of Regulation No 1408/71 to allow for continued application of a bilateral convention which that regulation would otherwise have replaced to a worker who is a national of a Member State also apply where the worker exercised the right to freedom of movement before the regulation entered into force and before the Treaty became applicable in his Member State of origin.

The second and third questions

29 By its second and third questions the national court is asking first of all whether an Austrian national's established right to have the Austro-German Convention, rather than Regulation No 1408/71, apply to him relates to the entire period during which he was exercising his right to free movement, and, secondly, whether all periods of unemployment insurance completed by the person concerned may serve as the basis for that right or whether only such periods as were completed before the entry into force in Austria of Regulation No 1408/71 may serve as its basis.

30 As the Court held at paragraph 29 of the judgment in *Rönfeldt*, and reiterates at paragraph 15 above, Articles 48 and 51 of the Treaty preclude the loss of social security advantages for workers who have exercised their right to freedom of movement which would result from the inapplicability, following the entry into force of Regulation No 1408/71, of conventions operating between two or more Member States and incorporated in their national law.

31 In other words, if, as regards a social security advantage, a national of a Member State can benefit from a right under a convention entered into between two Member States, and if that convention is more favourable to him than a rule of Community law which became applicable to him subsequently, the right derived by him under the convention is acquired by him once and for all, so that any restrictions on that right are incompatible with the provisions of Articles 48 and 51 of the Treaty.

32 Accordingly, as regards unemployment benefit, where periods of insurance or employment which form the basis of the worker's rights have been completed, at least partially, during a period when only the bilateral convention was applicable, the worker's overall situation must be assessed by reference to the provisions of that convention if it is favourable to him. In that regard there should be no differentiation either between the periods during which he was exercising his right to freedom of movement, or between the periods of insurance or employment, according to whether those periods preceded or succeeded the entry into force of the Treaty and of Regulation No 1408/71 in the worker's Member State of origin.

33 On the other hand, if the basis for the worker's rights arose entirely after the entry into force of Regulation No 1408/71, that is to say, as the Austrian Government puts it, if he has exhausted all the rights accrued on the basis of an earlier period of insurance or employment, which was followed by a period of unemployment during which he was in receipt of unemployment benefit, he is in a new situation which must be assessed in the light of the provisions of that regulation (see *Thévenon*, cited above).

34 Regulation No 1408/71 therefore only becomes applicable if any rights acquired under the bilateral convention have been wholly exhausted during the first period of unemployment. If they have not, the person concerned remains subject to the more favourable regime under the convention, even for subsequent periods of unemployment.

35 The reply to the second and third questions must therefore be that if periods of insurance or employment that entitle a worker who is a national of a Member State to the unemployment benefit claimed by him began to run before the entry into force of Regulation No 1408/71, his situation must be assessed in the light of the provisions of the bilateral convention for the entire period during which he was exercising his right to freedom of movement, and taking into account all the periods of insurance or employment completed by him regardless of whether those periods preceded or succeeded the entry into force of the Treaty and of Regulation No 1408/71 in his Member State of origin. If, however, after having exhausted all his rights under the convention, he exercises his right to freedom of movement anew, and if he completes further periods of insurance or employment entirely after the entry into force of Regulation No 1408/71, his new situation is governed by that regulation.

The fourth question

36 By its fourth question the national court is essentially asking whether a provision such as Paragraph 14(5) of the AlVG, which derogates from Article 67(3) of Regulation No 1408/71 in providing that in two situations, namely a stay of at least 15 years in Austria and unification of the family, the application for unemployment benefit need not necessarily be made in the last State where the worker completed a period of insurance or employment but may be made in Austria, is compatible with the principle of non-discrimination laid down by Article 48 of the Treaty.

37 It is settled case-law that Community law does not preclude more favourable rules under national law than those under Community law itself provided that such rules are compatible with Community law (see Case 34/69 *Duffy* [1969] ECR 597, paragraph 9; Case 100/78 *Rossi* [1979] ECR 831, paragraph 14; Case 733/79 *Laterza* [1980] ECR 1915, paragraph 8; Case 807/79 *Gravina and Others*

[1980] ECR 2205, paragraph 7; *Rönfeldt*, cited above, paragraph 26, and Case C-370/90 *Singh* [1992] ECR I-4265, paragraph 23).

38 In the main proceedings, the advantage which Paragraph 14(5) of the AlVG confers on unemployed persons who have spent 15 years in Austria before their last employment abroad primarily benefits settled Austrian nationals to the detriment of Austrian nationals who have exercised their right to freedom of movement and of most nationals of other Member States. Such a provision must therefore be regarded as a restriction on the right to freedom of movement and as discriminating on grounds of nationality.

39 The reply to the fourth question must therefore be that national law may contain more favourable rules than Community law provided that they comply with the principles of Community law. A rule in a Member State which, for the purposes of the criteria for entitlement to unemployment benefit, favours workers who spent 15 years in that Member State before their last employment abroad is incompatible with Article 48 of the Treaty.

Costs

40 The costs incurred by the Austrian, Spanish and Portuguese Governments and by 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 action 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 Verwaltungsgerichtshof by order of 29 June 1999, hereby rules:

1. The principles laid down by the Court in *Rönfeldt* (Case C-277/89) permitting non-application of the provisions of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, to allow for continued application of a bilateral convention which that regulation would otherwise have replaced to a worker who is a national of a Member State also apply where the worker exercised the right to freedom of movement before the regulation entered into force and before the EC Treaty became applicable in his Member State of origin.

2. If periods of insurance or employment that entitle a worker who is a national of a Member State to the unemployment benefit claimed by him began to run before the entry into force of Regulation No 1408/71, his situation must be assessed in the light of the provisions of the bilateral convention for the entire period during which he was exercising his right to freedom of movement, and taking into account all the periods of insurance or employment completed by

him regardless of whether those periods preceded or succeeded the entry into force of the Treaty and of Regulation No 1408/71 in his Member State of origin. If, however, after having exhausted all his rights under the convention, he exercises his right to freedom of movement anew, and if he completes further periods of insurance or employment entirely after the entry into force of Regulation No 1408/71, his new situation is governed by that regulation.

3. National law may contain more favourable rules than Community law provided that they comply with the principles of Community law. A rule in a Member State which, for the purposes of the criteria for entitlement to unemployment benefit, favours workers who spent 15 years in that Member State before their last employment abroad is incompatible with Article 48 of the Treaty.

Macken Colneric Puissochet

Schintgen Skouris

Delivered in open court in Luxembourg on 5 February 2002.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber