JUDGMENT OF THE COURT (Fifth Chamber)
13 March 1997 *

In Case C-131/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Raad van State (Netherlands) for a preliminary ruling in the proceedings pending before that court between

P. J. Huijbrechts

and

Commissie voor de Behandeling van Administratieve Geschillen ingevolge Artikel 41 der Algemene Bijstandswet in de Provincie Noord-Brabant,

on the interpretation of Article 67 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 (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), and Article 6 of the EC Treaty,

* Language of the case: Dutch.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, D. A. O. Edward (Rapporteur), J.-P. Puissochet, P. Jann and M. Wathelet, Judges,

Advocate General: A. La Pergola,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Spanish Government, by A. J. Navarro González, Director General of Community Legal and Institutional Coordination, and G. Calvo Díaz, Abogado del Estado, of the State Legal Service, acting as Agents,

— the Commission of the European Communities, by M. Patakia and H. van Vliet, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Netherlands Government, represented by M. A. Fierstra, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, the Spanish Government, represented by G. Calvo Díaz, and the Commission, represented by H. van Vliet, at the hearing on 18 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 3 October 1996,

gives the following

Judgment

1 By judgment of 25 October 1994, received at the Court on 21 April 1995, the Nederlandse Raad van State (State Council, Netherlands), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 67 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 (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6, hereinafter 'the Regulation'), and Article 6 of the EC Treaty.

2 Those questions were raised in proceedings between Ms Huijbrechts and Commissie voor de Behandeling van Administratieve Geschillen ingevolge Artikel 41 der Algemene Bijstandswet in de Provincie Noord-Brabant (Administrative Appeals Board for the Province of Noord-Brabant for Disputes under Article 41 of the General Law on Assistance, 'the Board') concerning the grant under the Wet Inkomensvoorziening Oudere en Gedeeltelijk Arbeidsongeschikte Werkloze Werknemers (the Netherlands Law on the Provision of Income for Elderly Unemployed Workers and Unemployed Workers suffering from Partial Incapacity to Work, *Stbl.* 1986, 565, 'the IOAW') of an allowance following on from an unemployment benefit.

3 Article 4(1) of the IOAW grants an allowance *inter alia* to an 'unemployed worker', defined in Article 2(1)(a) as a person who:

'(1) is unemployed and has not yet reached 65 years of age;

(2) became unemployed after he reached 50 years of age but before reaching 57.5 years of age;

(3) has, after becoming unemployed, received benefit in respect of loss of earnings and follow-on benefit within the meaning of the Werkloosheidswet (Unemployment Law, *Stbl* 1986, 566, "the WW") during the complete term for which benefits are payable under Article 42(1) and (2) or Articles 43(2) and 49(1), together with Article 76 of that law, in so far as it is applicable.'

4 Ms Huijbrechts, a national of the Netherlands, worked at Bergen op Zoom (Netherlands) from 1968 to 1982 while living in Belgium. After she was laid off, she received unemployment benefit in the latter State. At the end of December 1987 she moved to the Netherlands where for three months she continued to be paid her unemployment benefit under the Belgian legislation.

5 On 5 April 1988 she made an application for allowance under the IOAW to the mayor and council of the municipality of Putte (Netherlands). Her application was rejected on 15 August 1989 on the ground that she did not satisfy the condition

laid down in Article 2(1)(a)(3) of the IOAW. By decision of 10 October 1989 the council also rejected her complaint against that decision.

6 Ms Huijbrechts then brought a claim before the Board, relying upon Article 67 of the Regulation, which provides that for the purposes of acquisition, retention or recovery of the right to unemployment benefits, the institution of a Member State is to take into account to the extent necessary periods of insurance or employment completed under the legislation of any other Member State.

7 On 27 August 1990 the Board declared her claim to be unfounded on the grounds, first, that she could not be regarded as unemployed within the meaning of the IOAW and, second, that the IOAW was not an insurance scheme within the meaning of the Regulation.

8 Ms Huijbrechts appealed against that decision to the Raad van State. In her action, she repeated the argument that by application of Article 67 of the Regulation she met the conditions laid down in Article 2(1)(a)(3) of the IOAW.

9 Those were the circumstances in which the Raad van State decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. If a Member State causes the grant of an allowance following on from unemployment benefit, as in the case of the first sentence of Article 2(1) of the IOAW and subparagraph (a)(3) thereof, to depend on the requirement that benefit must have been received under the statutory unemployment provisions in force in the Member State during the whole period for which benefit was

payable, should, as a result of Article 67 of Regulation No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (in the consolidated version set out in Regulation No 2001/83, OJ 1983 L 230, p. 6), the periods during which unemployment benefit was received in another Member State be regarded as periods of insurance or of employment?

2. If not, does the fact that, in assessing whether a requirement laid down in Article 2(1)(a)(3) of the IOAW to the effect that benefit must have been received during the whole period for which benefit was payable under the statutory provisions on unemployment in force in the competent Member State is satisfied, no account is taken of unemployment benefit received in another Member State constitute discrimination on grounds of nationality within the meaning of Article 7 of the EEC Treaty (now Article 6 of the EC Treaty)?'

10 As formulated, those two questions, which should be considered together, are concerned solely with whether Article 67 of the Regulation, or, if not, Article 6 of the Treaty, is applicable in a situation such as that in point in the main proceedings.

11 The Court, being competent under Article 177 of the Treaty to provide courts of the Member States with all the elements of interpretation of Community law, may however deem it necessary to consider provisions of Community law to which the national court has not referred in its questions (Case C-315/92 *Verband Sozialer Wettbewerb* v *Clinique Laboratories and Estée Lauder* [1994] ECR I-317, paragraph 7).

12 In the light of the facts in the main proceedings, it is necessary, with a view to providing a helpful reply to the national court, to consider also whether other relevant provisions of the Regulation are applicable, and not merely Article 67.

13 As regards the personal scope of the Regulation, reference should be made to Article 2. According to Article 2(1), the Regulation applies *inter alia* to 'employed or self-employed persons who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States'.

14 Article 1(b) defines a 'frontier worker' as any employed or self-employed person who pursues his occupation in the territory of a Member State and resides in the territory of another Member State to which he returns as a rule daily or at least once a week.

15 A worker such as the appellant in the main proceedings meets that definition as between 1968 and 1982, Ms Huijbrechts worked in the Netherlands, while living in Belgium, where she returned every day or at least once a week.

16 With regard to the interpretation of the material provisions of the Regulation, the Court has consistently held that it is necessary to consider not only its wording but also its context and the aims pursued by the legislation of which it forms part (Case C-30/93 *AC-ATEL Electronics Vertriebs* [1994] ECR I-2305, paragraph 21).

17 The provisions of Title II of the Regulation constitute a complete and uniform system of conflict rules the aim of which is to ensure that workers moving within the Community shall be subject to the social security scheme of only one Member

State, in order to prevent the system of legislation of more than one Member State from being applicable and to avoid the complications which may result from that situation (Case C-71/93 *Van Poucke* [1994] ECR I-1101, paragraph 22).

18 To that end, Article 13(1) of the Regulation provides that '(...) the persons to whom this regulation applies shall be subject to the legislation of a single Member State only' and 'that legislation shall be determined in accordance with the provisions of this title'. By virtue of Article 13(2)(a) 'a person employed in the territory of one Member State shall be subject to the legislation of that Member State even if he resides in the territory of another Member State (...)'.

19 The Court has held that the sole purpose of Article 13(2)(a) is to determine the national legislation applicable and not to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme (Case C-2/89 *Kits van Heijningen* [1990] ECR I-1755, paragraph 19).

20 The general rule set out in Article 13 is defined in greater detail, with regard to unemployment benefits, by Articles 67 and 68, which lay down the method of calculating those benefits, and Article 69 which, subject to certain conditions, preserves entitlement to benefit in the State where the person concerned was last employed when he goes to one or more Member States in order to seek employment there.

21 It follows from all those provisions that the competent State in relation to unemployment benefits is the State where the unemployed person was last employed (see Case 145/84 *Cochet* [1985] ECR 801, paragraph 14), with the result that, in accordance with Article 1(o) and (q) it is in principle that Member State which is responsible for paying those benefits.

22 However, the Regulation derogates from that principle in respect of frontier workers. Article 71(1)(a)(ii) provides:

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

(a) (i) (...)

(ii) a frontier worker who is wholly unemployed shall receive benefits in accordance with the legislation of the Member State in whose territory he resides as though he had been subject to that legislation while last employed; these benefits shall be provided by the institution of the place of residence at its own expense.

(...)'

23 It is clear from that provision that a frontier worker who is wholly unemployed is not entitled to unemployment benefit in the State where he was last employed, even if he paid contributions there, but is obliged to become affiliated to the social security scheme of the Member State in which he resides and to receive in that State, during the period in which he lives there, the unemployment benefits provided for by its legislation.

24 According to the wording of Article 71(1)(a)(ii), the Member State in whose territory a frontier worker resides is responsible for paying those benefits 'as though' it were the State where he was last employed. While that legal fiction suspends the obligations of the State where the unemployed person was last employed for so long as he continues to reside in another Member State, it does not have the effect of extinguishing them.

25 Thus, in *Cochet*, cited above, the Court held, on the one hand, that Article 71(1)(a)(ii) does not affect the principle that the competent State is the State where the person concerned was last employed (paragraph 15) and, on the other, that Article 69 relating to 'Unemployed persons going to a Member State other than the competent State' is not applicable to a wholly unemployed frontier worker who, on the termination of his last employment, settles in the territory of the competent Member State, that is to say the Member State where he was last employed.

26 It follows that in a situation such as that in point in the main proceedings, the fact that the person concerned resided in Belgium and, pursuant to Article 71(1)(a)(ii) of the Regulation, received unemployment benefit there under Belgian legislation does not relieve the State where she was last employed, the Kingdom of the Netherlands, of its competence in principle. The Kingdom of Belgium was required to pay the benefit 'as though' it were the State where she was last employed.

27 Similarly, although during the three months following her move to the Netherlands, the appellant in the main proceedings continued to receive unemployment benefit under Belgian legislation, that was the consequence of an erroneous application of the provisions of the Regulation. That fact cannot therefore affect her legal situation.

28 It follows from the foregoing considerations that, where an unemployed frontier worker, after receiving unemployment benefit in the State in which he is resident, settles in the Member State in which he was last employed, the derogation under Article 71(1)(a)(ii) ceases to apply, with the result that the State in which he was last employed must begin, or begin afresh, to assume its obligations under the Regulation in relation to unemployment benefit. Consequently, benefits paid by the State in which he was temporarily resident must be taken into account, for the application of the legislation of the State in which he was last employed, as though they had been paid by the latter State.

29 Accordingly, without there being any need to consider Article 6 of the Treaty, the reply to the questions referred to the Court must be that the provisions of the Regulation relating to unemployment benefit, and in particular Article 71(1)(a)(ii),

read in conjunction with Article 13, are to be interpreted as meaning that where, in the State of last employment, the grant of an allowance following on from an unemployment benefit is made subject to the condition that the frontier worker concerned has received unemployment benefit for a given period, that State is required to take into account unemployment benefit received by that worker in the State in which he resides in accordance with Article 71(1)(a)(ii), as though that benefit had been received in the former State.

Costs

30 The costs incurred by the Netherlands and Spanish 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 (Fifth Chamber),

in answer to the questions referred to it by the Raad van State (Netherlands), by judgment of 25 October 1994, hereby rules:

The 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, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 relating to unemployment benefit, and in particular Article 71(1)(a)(ii), read in conjunction with Article 13, are to be interpreted as meaning that where, in the State of last employment, the grant of an allowance following on from an unemployment benefit is made subject to the condition that the frontier worker concerned has received unemployment benefit for a given period, that State is required to take into account unemployment benefit received by that worker in the State in which he resides in accordance with Article 71(1)(a)(ii), as though that benefit had been received in the former State.

Moitinho de Almeida Edward Puissochet

Jann Wathelet

Delivered in open court in Luxembourg on 13 March 1997.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber