JUDGMENT OF THE COURT
OF 29 NOVEMBER 1977 [1]

Elisabeth Beerens
v Rijksdienst voor Arbeidsvoorziening
(preliminary ruling requested by the Arbeidsrechtbank of Hasselt)

Case 35/77

Social security for migrant workers — Community rules — Field of application — National law or regulation specified or not specified by a Member State in the declarations referred to in Article 5 of Regulation No 1408/71 — Consequences

The fact that a national law or regulation has not been specified in the declarations referred to in Article 5 of the regulation is not of itself proof that that law or regulation does not fall within the field of application of the said regulation; on the other hand, the fact that a Member State has specified a law in its declaration must be accepted as proof that the benefits granted on the basis of that law are social security benefits within the meaning of Regulation No 1408/71.

In Case 35/77

Reference to the Court under Article 177 of the EEC Treaty by the Arbeidsrechtbank (Labour Court) of Hasselt for a preliminary ruling in the action pending before that court between

ELISABETH BEERENS

and

RIJKSDIENST VOOR ARBEIDSVOORZIENING

on the interpretation of Article 69 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),

1 — Language of the Case: Dutch.

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco, Presidents of Chambers, A. M. Donner, P. Pescatore, J. Mertens de Wilmars, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts of the case, the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The documents on the file from the national court show that the plaintiff in the main action worked in the Netherlands from 1 June 1975 to 9 June 1975, when she ceased to be employed because of illness. Her employer then dismissed her with effect from 1 August 1975.

Since her period of employment was of short duration the plaintiff in the main action did not fulfil the conditions required under the Netherlands Law on compulsory insurance of workers against the financial consequences of involuntary unemployment ('Werkloosheidswet'). She nevertheless received as from 1 October 1975 the benefits provided for under the Netherlands Law laying down rules for public allowances for unemployed workers ('Wet Werkloosheidsvoorziening', hereinafter referred to as 'the WWV'). She received those benefits until 14 July 1976, when she left the Netherlands and took up residence in Belgium on the occasion of her marriage to a Belgian national. On the same date she registered with the Rijksdienst voor Arbeidsvoorziening (the Belgian National Department of Employment) and applied to it for unemployment benefits. When she made that application she relied on the provisions of Article 69 of Regulation (EEC) No 1408/71 of the Council, according to which 'A worker who is wholly unemployed and who satisfies the conditions of the legislation of a Member State for entitlement to benefits and who goes to one or more other Member States in order to seek employment there shall retain his entitlement to such benefits' under the conditions and within the limits indicated in that article.

By its decision of 8 September 1976 the Rijksdienst voor Arbeidsvoorziening rejected the application on the ground that, on the one hand, the plaintiff in the main action does not fulfil the conditions required by Belgian law and, on the other hand, because her period of

employment in the Netherlands did not qualify her for unemployment benefit and she cannot therefore rely on Article 69 of Regulation No 1408/71.

However, the plaintiff in the main action, who had in her possession a certificate issued by the local authority of the place in the Netherlands where she resided to the effect that she had received the allowances provided for under the WWV from 1 October 1975 to 14 July 1976 took the view that during that period she had received unemployment insurance benefits. She therefore lodged an appeal against the decision of the Rijksdienst before the Arbeidsrechtbank (Labour Court) of Hasselt.

The Arbeidsrechtbank found that the dispute concerned the classification of the unemployment benefits provided for by the Netherlands legislation adopted for the purpose of implementing Regulation No 1408/71 and it decided by a judgment of 16 March 1977 to stay proceedings and refer to the Court of Justice of the European Communities for a preliminary ruling in accordance with Article 177 of the EEC Treaty the following questions:

'Given that the objective of Regulation (EEC) No 1408/71 is to facilitate the free movement of workers within the Community and *inter alia* to secure mobility of labour under improved conditions by means of closer coordination between unemployment insurance schemes and unemployment assistance schemes, may it be taken that the Netherlands laws relating to assistance applicable by reason of the unemployment of a worker allow of reliance on Article 69 of the abovementioned regulation?

More particularly, may it be taken that, as those laws are not in the Netherlands social security legislation, the plaintiff satisfies the conditions of the legislation of a Member State (the Netherlands) for entitlement to unemployment benefits within the meaning of the regulation relied on, Regulation (EEC) No 1408/71, with all ensuing consequences for the transferability of her entitlement to unemployment benefits to another Member State (Belgium) where such benefits are indeed social security benefits?'

The judgment making the reference was entered at the Court Registry on 25 March 1977.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the Government of the Kingdom of the Netherlands and by the Commission of the European Communities, represented by its Legal Adviser, Miss Marie-José Jonczy, acting as Agent, assisted by Mr Auke Haagsma, a member of the Commission's Legal Service.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

The *Netherlands Government* considers the three Netherlands instruments mentioned in the judgment making the reference under which the benefits at issue could have been provided.

1. The 'Werkloosheidswet' (Law of 9 September 1949 on the compulsory insurance of workers against the financial consequences of involuntary unemployment, as amended);
2. The 'Wet Werkloosheidsvoorziening' (Law of 10 December 1964 laying down rules for public allowances for unemployed workers, as amended);
3. The 'Rijksgroepsregeling werkloze werknemers' (Order of 2 December 1964 laying down national rules for

categories of unemployed workers, as amended).

If in this case the benefits at issue were paid under the laws mentioned in either 1 or 2 above Regulation No 1408/71 would undoubtedly be applicable. In this connexion it is only necessary to refer to the Declaration of the Kingdom of the Netherlands published in the Official Journal, C 12 of 24 March 1973, p. 21. The position would be different if the benefits had been paid to the plaintiff in the main action pursuant to the order mentioned in 3 above. The latter is in fact based on Article 11 of the 'Algemene Bijstandswet' (the general Law relating to social assistance), which provides that specific rules in the field of social assistance, applicable to a particular class of persons, may be adopted by a general administrative decision.

Since the 'Rijksgroepsregeling werkloze werknemers' is an order dealing with social assistance Regulation No 1408/71 does not apply to it having regard to Article 4 (4) of that regulation.

The Commission, after examining the file from the national court, points out that the plaintiff in the main action was paid benefits under the WWV.

As for the question whether that law is among the matters covered by Regulation No 1408/71, the Commission refers to the declarations of the Member States, as provided for in Article 5 of Regulation No 1408/71 (mentioned above). Since the declaration of the Kingdom of the Netherlands mentions the WWV law under Heading '(d) Unemployment benefits', there is no doubt that Regulation No 1408/71 applies *ratione materiae* to that law.

As for the question whether Article 69 of Regulation No 1408/71 applies to the WWV, the Commission stresses the fact that Article 69 is designed to allow an unemployed worker to move within the Community to find employment there without thereby forfeiting the unemployment benefits to which he is entitled under the legislation to which he was subject when last employed. Regulation No 1408/71 provided for the retention of entitlement to benefit as from its entry into force in the case of all workers covered by that regulation under all the laws on unemployment to which it applies *ratione materiae* and consequently in the case of workers who have received benefits under the WWV in the Netherlands.

It follows that as a general rule the plaintiff in the main action could rely on Article 69 of Regulation No 1408/71 to maintain her entitlement to benefit during the three months after she took up residence in Belgium. Nevertheless, it is also necessary to check that she fulfilled the conditions laid down by Article 69. That article, as well as laying down certain administrative requirements, provides generally that a worker may receive benefits under Article 69 only if he satisfies the conditions required by the domestic legislation under which he is entitled to benefits. On the question of the duration of the entitlement to benefits the Commission refers to Article 69 (1) (c) which reads 'entitlement to benefits shall continue for a maximum period of three months from the date when the person concerned ceased to be available to the employment services of the State which he left, provided that the total duration of the benefits does not exceed the duration of the period of benefits he was entitled to under the legislation of that State'.

In addition to the temporal condition, the unemployed worker must also continue to fulfil the material requirements of the legislation of the Member State which he has left. Although Article 69 does not itself expressly say so, the very concept of the retention of entitlement leads by implication to such an interpretation.

In the light of these considerations the Commission takes the view that the

plaintiff in the main action could be granted benefits under the WWV by the Rijksdienst voor Arbeidsvoorziening, payable by her locality of origin, only in so far as she continued to satisfy the conditions laid down by the WWV during that period. It is for the court seized of the main action to determine whether the person concerned satisfies those conditions.

The Commission suggests that the question referred be answered as follows:

'If a worker, who is wholly unemployed and is entitled to unemployment benefits under legislation of a Member State to which Regulation No 1408/71 of the Council applies *ratione materiae,* moves to a Member State other than the competent Member State, he retains under Article 69 of the said regulation his entitlement to those benefits for a period of three months, in so far as he continues to satisfy the conditions laid down by the legislation of the competent Member State during that period.'

III — Oral procedure

The Commission of the European Communities submitted its oral observations at the hearing on 12 October 1977.

The Advocate-General delivered his opinion at the hearing on 10 November 1977.

Decision

1 By a judgment of 16 March 1977, which reached the Court on 25 March 1977, the Arbeidsrechtbank (Labour Court) of Hasselt referred to the Court of Justice under Article 177 of the Treaty for a preliminary ruling a question on the interpretation of Regulation (EEC) No 1408/71 of the Council.

2 The question has arisen in a dispute between Mrs Elisabeth Ermin, *née* Beerens and the Belgian National Department of Employment concerning the plaintiff's entitlement to unemployment benefits.

3 The plaintiff left the Netherlands and took up residence in Belgium in 1976 on the occasion of her marriage and applied for unemployment benefits, relying on Article 69 of Regulation No 1408/71 and the fact that in the Netherlands she received unemployment benefits under the 'Wet Werkloosheidsvoorziening' (Law relating to unemployment allowances).

4 In the Netherlands the rules relating to unemployment are made up of three laws, the 'Werkloosheidswet', the Law on the compulsory insurance of workers against the financial consequences of involuntary unemployment, the

'Wet Werkloosheidsvoorziening', the Law laying down rules for public allowances for unemployed workers, and the 'Rijksgroepsregeling werkloze werknemers', a regulation adopted pursuant to the 'Algemene Bijstandswet' (the general Law relating to social assistance); the national court was of the opinion that the last two laws are not social security legislation but social assistance legislation, the administration whereof is entrusted to the local authorities and not to the social security institutions.

5 It has therefore asked whether the Netherlands laws relating to social assistance which apply to workers who are unemployed allow of reliance on Article 69 of Regulation No 1408/71 and whether persons such as the plaintiff satisfy 'the conditions of the legislation of a Member State (the Netherlands) for entitlement to unemployment benefits within the meaning of the regulation relied on, Regulation No 1408/71, with all ensuing consequences for the transferability of her entitlement to unemployment benefits to another Member State (Belgium) where such benefits are indeed social security benefits'.

6 Article 4 (1) of Regulation No 1408/71 provides that 'This regulation shall apply to all legislation concerning the following branches of social security: ... (g) unemployment benefits', whilst the fourth paragraph thereof excludes social and medical assistance from its field of application.

7 Article 5 of that regulation provides that: 'The Member States shall specify the legislation and schemes referred to in Article 4 (1) and (2) .... in declarations to be notified and published in accordance with Article 96'.

8 In the Netherlands declaration OJ C 12 of 24. 3. 1973) the 'Wet Werkloosheidsvoorziening' as well as the 'Werkloosheidswet' are listed under Heading '(d) Unemployment benefits'.

9 The fact that a national law or regulation has not been specified in the declarations referred to in Article 5 of the regulation is not of itself proof that law or regulation does not fall within the field of application of the said regulation; on the other hand, the fact that a Member State has specified a law in its declaration must be accepted as proof that the benefits granted on the

basis of that law are social security benefits within the meaning of Regulation No 1408/71.

10 This must therefore be the answer to the question referred.

Costs

11 The costs incurred by the Government of the Kingdom of the Netherlands and by the Commission, which have submitted observations to the Court, are not recoverable.

12 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Arbeidsrechtbank (Labour Court) of Hasselt by judgment of 16 March 1977, hereby rules:

The fact that a Member State has specified a law in its declaration under Article 5 of Regulation No 1408/71 must be accepted as proof that the benefits granted on the basis of that law are social security benefits within the meaning of the said regulation.

Kutscher Sørensen Bosco Donner Pescatore

Mertens de Wilmars Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 29 November 1977.

A. Van Houtte
Registrar

H. Kutscher
President