In Case 227/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the French Cour de Cassation [Court of Cassation], Social Chamber, for a preliminary ruling in the action pending before that court between

FRANCIS AUBIN

and

1. UNION NATIONALE INTERPROFESSIONNELLE POUR L'EMPLOI DANS L'INDUSTRIE ET LE COMMERCE [National Trades Association for Employment in Industry and Commerce, hereinafter referred to as "the National Association") (UNEDIC)

2. ASSOCIATION POUR L'EMPLOI DANS LES INDUSTRIES ET LE COMMERCE DES YVELINES [Association for Employment in Industry and Commerce of the Yvelines, hereinafter referred to as "the Yvelines Association"], (ASSEDIC)

on the interpretation 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, in particular the provisions relating to unemployment,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, A. Chloros and F. Grévisse, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted by the parties pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and written procedure

Mr Aubin, a French national, was working in Paris for a Belgian undertaking when in September 1970 his employer offered him a post in Brussels. Mr Aubin decided therefore to move with his family to Belgium.

In December 1972 he took up other employment and returned to work in France, in the Paris area, but retained his home in Belgium for the time being.

Mr Aubin was made redundant on economic grounds on 25 February 1975 and as he had paid regular unemployment insurance contributions in France, sought information as to how to set about claiming benefit.

By letter dated 12 March 1975 the Inspecteur du Travail [employment officer] for the Yvelines informed Mr Aubin that he must register as a person seeking work at his place of residence in Belgium and that he would be paid unemployment benefit by the Belgian authorities in accordance with the terms of Regulations No 1408/71 and No 574/72 of the Council.

On that advice Mr Aubin presented himself to the employment authorities in Belgium and asked the French authorities to send him the forms necessary for the application of Regulation No 1408/71 which were drawn up by Commission Decision No 72 of 1 October 1972 (Journal Officiel L 261, p. 1). The French employment authorities refused, however, to supply certain documents which were intended in their opinion to govern legal situations different from that of Mr Aubin.

In any event the Belgian Office National de l'Emploi [national employment bureau] informed Mr Aubin, by a decision notice of which he received on 8 August 1975, that he was not entitled to unemployment benefit because he did not meet the conditions laid down by the Arrêté Royal Belge [Belgian Royal Decree] of 20 December 1963 on employment and unemployment, which required that he should have engaged in paid work in Belgium for at least one day in the course of the eighteen months preceding his being made redundant.

Mr Aubin did not appeal against that decision in Belgium. He sought payment of unemployment benefit in France from the Yvelines Association which, in reliance on Article 1 of the regulation annexed to the Collective Agreement of 31 December 1958, rejected his claim on the ground that he had not registered as a person seeking work in France.

Despite Mr Aubin's repeated attempts to extricate himself from this impasse the French authorities merely confirmed that their Belgian counterparts were adopting a different interpretation of the Community provisions concerning unemployed migrant workers.

On 1 October 1976 Mr Aubin trasferred his residence to the Paris region, where he found fresh employment.

He sought to recover from the national Association and the Yvelines Association unemployment benefit to which he was entitled under French legislation for the period between 25 February 1975 and 30 September 1976 in the Tribunal de Grande Instance [Regional Court], Paris, which by a judgment of 1 June 1978, ruled that the claim was inadmissible with regard to the National Association and unfounded with regard to the other defendant.

Mr Aubin appealed against that decision and subsequently brought the matter before the Cour de Cassation. By a judgment of 7 July 1981 the Social Chamber of that court decided to refer the following two questions to the Court of Justice for a preliminary ruling:

"(1) Whether a French national, who worked in France until made redundant, who was not registered in France as a person seeking work and resided in Belgium where he had registered as a person seeking work, was entitled under Community legislation to be paid unemployment benefit by the competent institution of the Belgian State, or whether he was entitled to claim it from that of the French State as well,

(2) Whether the fact that he had registered in Belgium as a person seeking work is of such a nature as to require the condition of French legislation that he should be registered in France with the Agence Nationale pour l'Emploi as a person seeking work to be deemed to be fulfilled."

The judgment making the reference was lodged at the Court Registry on 3 August 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community written observations were submitted by Claire Waquet, advocate at the Conseil d'Etat and the Cour de Cassation, and by Catherine Veron-Clavière, advocate at the Cour de Paris, on behalf of Francis Aubin, the appellant; by Christian Boullez, advocate at the Conseil d'Etat and the Cour de Cassation, on behalf of the National Association and the Yvelines Association, the respondents; by Maryse Aulagnon, a Member of the Interministerial Committee on European Economic Cooperation, acting as Agent, on behalf of the French Government; and by Jean Amphoux, Legal Adviser to the Commission of the European Communities, acting as Agent, assisted by Georges Vandersanden of the Brussels Bar, on behalf of the Commission.

On 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.

By order dated 3 February 1982 the Court decided to assign the case to the Second Chamber pursuant to Article 95 (1) and (2) of the Rules of Procedure.

II — Summary of the written observations submitted to the Court

First question

The *appellant*, Mr Aubin, submits that the reply to the first question is to be found without difficulty in Article 13 (2) (a) of Regulation No 1408/71 of the Council which states that "a worker employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State". As a general principle that is confirmed by Article 67 of Regulation No 1408/71 which makes application of paragraphs (1) and (2) of that article subject to "the condition that the person concerned should have completed lastly ... periods of insurance ... [or] periods of employment ... in accordance with the provisions of the legislation under which the benefits are claimed".

Since none of the exceptions provided for in Articles 14 to 17 of Regulation No 1408/71 apply, the appellant considers that it is the authorities of the Member State in which he was last employed — in his case the French authorities — who are responsible for the payment of the unemployment benefit.

Mr Aubin observes that the debate which has arisen within the French administration and the Belgian institutions has centred on Article 71 (1) (b) of Regulation No 1408/71, each of the States concerned claiming that Mr Aubin falls within the scope of that provision which is interpreted by them in different ways. The text reads as follows:

"An unemployed person 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:

(i) a worker, other than a frontier worker, who is partially, intermittently or wholly unemployed and who remains available to his employer or to the employment services in the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State as though he were residing in its territory; these benefits shall be provided by the competent institution;

(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 the provisions of Article 69, make a claim for benefits under the legislation to which he was last subject."

The French authorities consulted by the appellant decided that inasmuch as Mr Aubin was living in Belgium and had worked in France the competent State for payment of the unemployment benefit must be Belgium. The appellant contends, however, that Article 71 (1) (b) (ii) lays down, not an obligation, but merely the possibility of a derogation from the general rule contained in Article 13. By making provision for the transfer of the burden of payment from the Member State of last employment to the State of residence Article 71 (1) (b) (ii) gives workers who reside in a State other than that in which they held their last employment the opportunity of obtaining unemployment benefit in their State of residence provided, however, that they expressly declare their intention to return to their chosen State and subject themselves to its legislation. The applicant considers none the less that if the worker does not ask for the provisions of Article 71 (1) (b) (ii) to be applied in his case that provision may not be applied against him by the State in which he was last employed where he is claiming payment of unemployment benefit in accordance with general principles.

Mr Aubin cites the judgment in *Di Paolo* (Case 76/76 [1977] ECR 315) in which the Court, after ruling that the exception contained in Article 71 (1) (b) (ii) of Regulation No 1408/71 must be strictly construed, interpreted the concept of residence referred to in that provision as meaning that "whenever a worker has a stable employment in a Member State there is a presumption that he resides there, even if he has left his family in another State". The *Di Paolo* decision makes it clear that that presumption may be rebutted only by evidence that the worker maintains his habitual centre of interest in the State which is claimed to be the State of residence. The Court takes into account "the length and continuity of residence before the person concerned moved, the length and purpose of his absence, the nature of the occupation found in the other Member State and the intention of the person concerned as it appears from all the circumstances" (paragraph 22 of the decision in *Di Paolo*).

According to the facts of the case, which are not contested, Mr Aubin's habitual centre of interest is in France. The reasons which led the appellant to "move" to Belgium were purely of a short-term economic nature inasmuch as they were connected with the promotion proposed by the Belgian employer. Mr Aubin clearly manifested his intention to maintain his centre of interest in France when he lost his employment in Belgium and later when he was made redundant in February 1975. The appellant is anxious to emphasize that registration with the Belgian Office National de l'Emploi was merely an administrative step which was necessary, according to the information he had received from the French authorities, in order to obtain payment of unemployment benefit; such a step cannot be considered as evidence that the appellant wished to "return" to Belgium and find employment there.

On the basis of the foregoing the appellant considers that he was entitled to demand payment of unemployment

benefit from the authorities in France, the State in which he was last employed.

Furthermore that interpretation of Article 71 (1) (b) (ii) is the only interpretation which is compatible with the principle of freedom of movement set out in Article 51 of the Treaty. The appellant adds, on the basis of the decisions in *Petroni* (Case 24/75 [1975] ECR 1149) and *Manzoni* (Case 112/76 [1977] ECR 1647) that any interpretation of a provision of Community law which results in depriving the migrant worker of the rights he enjoys under national legislation alone must be rejected. That applies to the interpretation of Article 71 (1) (b) (ii) suggested by the French administration inasmuch as it leaves the worker without any protection against unemployment.

The *defendants* (the National Association and the Yvelines Association) claim that the first question which has been submitted for a preliminary ruling has two limbs: the first asks whether Mr Aubin could choose to seek payment of unemployment benefit from either the Belgian or the French competent authorities, and the second asks which of the two national institutions concerned was responsible for paying benefits under unemployment insurance.

As to the first of those points the defendants observe that Regulations No 1408/71 and No 574/72 of the Council, the principal purpose of which is to coordinate measures for unemployment compensation within the EEC, define the national institution charged with making payment on the basis of objective criteria. Consequently it was not open to Mr Aubin to choose which system (Belgian or French) was to apply, that being dictated by the coordinating Community rules.

As to the second limb, the defendants point out that the issue does not turn on the reasons for Mr Aubin's failure to register as a person seeking work in France, but on the fact that he presented himself to the employment authorities in Belgium. That being so, his position is governed by the terms of Article 71 of Regulation No 1408/71 whereby the national institution charged with payment is that of the State in which the worker registers as a person seeking work, namely the Belgian Office National de l'Emploi.

The *Commission*, after recalling the terms of Article 71 of Regulation No 1408/71, points out that the aim of that provision as expressed in the ninth recital in the preamble to Regulation No 1408/71 is to enable unemployed workers to receive unemployment benefit on conditions most favourable to the search for new employment. To that end the Community rules allow a worker to draw benefit under the unemployment insurance scheme in the Member State in which he resides (Case 39/76 *Mouthaan* [1976] ECR 1901).

The Commission draws a distinction based on the terms of Article 71 between the position of a frontier worker (Article 71 (a)) and that of any other worker who during his most recent period of employment resided in a Member State other than that in which he worked (Article 71 (1) (b)).

The Commission is of the opinion that it is not possible on the basis of the infor-

mation contained in the file to determine with certainty whether or not Mr Aubin was a frontier worker. However that may be, whether Mr Aubin was a frontier worker — in which case the provisions of Article 71 (1) (a) (ii) of Regulation No 1408/71 were applicable to him — or, on the contrary, was a worker other than a frontier worker and therefore subject to the provisions of Article 71 (1) (b) (ii) of the same regulation, payment of the unemployment benefits due to Mr Aubin, who had presented himself to the employment authorities in Belgium where he was residing were, by virtue of those provisions, the responsibility of the Belgian employment authorities and in determining his entitlement to such benefits the contributions paid by Mr Aubin in France must be assimilated to contributions paid in Belgium.

The *French Government* lays emphasis on the preliminary point that inasmuch as Regulation No 1408/71 of the Council contains provisions to prevent the overlapping of benefits (Article 12) Mr Aubin could only be entitled to benefit from *either* the Belgian State *or* the French State.

Article 67 (3) of Regulation No 1408/71 provides that the last period of employment must have been completed in accordance with the provisions of the legislation under which the benefits are claimed, which means, in fact, in the State of residence, the State responsible for providing total unemployment benefit.

The French Government observes that Article 71 (1) contains an exception to that provision in favour of frontier workers and certain migrant workers. That provision, as interpreted by the Court in the *Di Paolo* decision (Case 76/76 [1977] ECR 315, paragraph 3 of the decision), enables benefits to be granted to redundant workers who would, on a strict application of Article 67 (3), be denied them. The French Government emphasizes that French benefits are not refused to a worker deprived of employment which he pursued in another Member State provided that his residence is settled in France and that he presents himself to the French employment authorities.

The French Government observes, however, that the Belgian authorities have not interpreted Article 71 of Regulation No 1408/71 to that effect and expresses the hope that the criteria laid down by the Court in the *Di Paolo* case may be given general application so as to confirm the existence of a link between the State of employment and the State of residence.

Second question

The *appellant*, Mr Aubin, submits that the principle that the conditions which must be satisfied in various Member States for the enjoyment of rights deriving from the contract of employment must be equivalent is a necessary consequence of the principle of the free movement of workers laid down in Articles 48 to 51 of the Treaty of Rome. By virtue of that principle a worker's failure to satisfy in one Member State a condition imposed by the legislation of that State for the grant of benefits deriving from the contract of employment may not be held against him provided that he fulfils, in good faith, the same or an equivalent condition in a different Member State.

According to the observations submitted on behalf of the appellant the principle of equal conditions is a means of surmounting the inconsistencies arising from application of different national

laws whilst guaranteeing unity in interpretation and uniformity in the application of the principles of Community law. The rule on equal conditions is particularly apt with regard to questions of form such as the requirement of administrative registration or of enrolment. The condition of "good faith" attached to the operation of the rule excludes fraudulent registration or carelessness on the part of the worker.

The appellant's view is that what is important for Community law is not the formal conditions concerning registration or affiliation which may be laid down by a State as a condition for obtaining a benefit, but solely the objective conditions of substance upon which the grant of the benefit depends. The Court stated its view to that effect in the *Mouthaan* decision (Case 39/76 [1976] ECR 1901) when it declared that "the status of worker within the meaning of Regulation No 1408/71 is acquired when the worker complies with the substantive conditions laid down objectively by the social security scheme applicable to him even if the steps necessary for affiliation to that scheme have not been completed".

The appellant concludes that the absence of affiliation in a Member State does not prevent payment of unemployment benefit, *a fortiori* when, as in the present instance, registration was not lacking but merely incorrect and the mistake was not attributable to the person concerned. The reply to the second question must therefore be in the affirmative.

He further emphasizes that the principle of equity embodied in many of the fundamental rights which are guaranteed under the Community legal order demands that he be paid the benefit to which he was entitled.

The *defendants* (the National Association and the Yvelines Association) state that there is no provision in Regulation No 1408/71 of the Council, apart from Article 69 which is not in question, to the effect that registration as a person seeking work in one Member State is considered as valid in order to qualify for payments under rules applicable in another Member State. The criteria for determining the link between the redundant worker and the State in which he has registered as a person seeking work and in which he resides have been laid down by Regulation No 1408/71. The adoption of any conflicting system would undermine the logic of the Community scheme established by the Council.

The *Commission* considers that if it is established that unemployment benefit is payable by the Belgian employment authorities the second question has no purpose.

In so far as it may be pertinent, the Commission points out that Article 86 of Regulation No 1408/71 of the Council ("Claims, declarations or appeals submitted to an authority ... of a Member State other than a competent State") provides no assistance for Mr Aubin inasmuch as that provision does not enable registration as a person seeking work in Belgium to be considered sufficient to make the French authorities the competent institution when in the circumstances it is the Belgian authorities who are responsible for payment of the unemployment benefit.

Article 86 is intended to facilitate administrative procedure for the migrant worker who has addressed himself, not to the authorities of the competent State but to a corresponding authority in another Member State. In such cases Article 86 provides for transmission of claims between the national authorities concerned (Case 40/70 *Costers* [1974] ECR 1323; Case 108/75 *Balsamo* [1976] ECR 375).

The Commission takes the view that the appellant may rely on that provision, however, first as against the French authorities so that they shall transmit to the Belgian authorities the claim for benefits lodged by him (Case 143/79 *Walsh* [1980] ECR 1639), and secondly as against the Belgian authorities so that they shall consider the claim.

The *French Government* invites the Court to hold that in the light of the terms of the Community provisions, in particular Articles 69 and 71 of Regulation No 1408/71, registration as a person seeking work in the State which grants and pays the unemployment benefit is a *condicio sine qua non* for the receipt of benefits.

III — Oral procedure

The parties presented oral argument at the sitting on 4 March 1982.

The Advocate General delivered his opinion at the sitting on 29 April 1982.

Decision

1 By judgment of 7 July 1981 which was received at the Court Registry on 3 August 1981 the French Cour de Cassation [Court of Cassation] referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Regulation No 1408/71 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), and in particular the interpretation of the provisions in that regulation relating to unemployment.

2 The questions arose in the course of an action between Mr Aubin and the Union Nationale Interprofessionnelle pour l'Emploi dans l'Industrie et le Commerce [National Trades Association for Employment in Industry and Commerce, hereinafter referred to as "the National Association"] and the Association pour l'Emploi dans les Industries et le Commerce du Département des Yvelines [Association for Employment in Industry and Commerce of the Yvelines, hereinafter referred to as "the Yvelines Association"].

3 Mr Aubin, a French national, worked in Paris for a Belgian undertaking. In September 1972 he accepted his employer's offer of a post in Brussels and

decided to move with his family to Belgium. In December 1972 Mr Aubin changed his employment and returned to work in France, in the Paris area, but retained his home in Belgium.

4 On 25 February 1975 Mr Aubin was made redundant on economic grounds. As he had regularly paid unemployment insurance contributions in France, he sought information from the Yvelines departmental employment and labour office as to how to set about claiming benefit. By letter dated 12 March 1975 the Inspecteur du Travail [employment officer] for the Yvelines informed him that he must apply to the employment institution in his place of residence, Belgium, for registration as a person seeking work, and that he would be paid unemployment benefit by the Belgian authorities in accordance with the terms of Regulations Nos 1408/71 of 14 June 1971 and 574/72 of 21 March 1972, both of the Council.

5 On 6 August 1975 the Belgian Office National de l'Emploi [national employment bureau] took a decision informing Mr Aubin that he was not entitled to unemployment benefit in Belgium, mainly on the grounds that he did not meet the conditions laid down by the Arrêté Royal Belge [Belgian Royal Decree] of 20 December 1963 on employment and unemployment, inasmuch as he had not engaged in paid work in Belgium for at least one day in the course of the eighteen months preceding his being made redundant.

6 On 1 October 1976 Mr Aubin found employment in the Paris area and transferred his residence there.

7 By letter dated 14 May 1977 Mr Aubin claimed unemployment benefit from the National Association. The Association dismissed his claim principally on the ground that he had not registered in France as a person seeking work.

8 Mr Aubin then sought through the courts to recover from the National Association and the Yvelines Association the unemployment benefit to which he was entitled under French legislation for the period between 25 February

1975 and 30 September 1976, together with damages. By a judgment of 1 June 1978 the Tribunal de Grande Instance [Regional Court], Paris, declared the claim inadmissible as regards the National Association and unfounded as regards the Yvelines Association.

9 Mr Aubin appealed against the judgment to the Cour d'Appel [Court of Appeal], Paris, and subsequently to the Cour de Cassation [Court of Cassation] which referred the following questions to the Court of Justice for a preliminary ruling:

"(1) Whether a French national, who worked in France until made redundant, who was not registered in France as a person seeking work and resided in Belgium where he had registered as a person seeking work, was entitled under Community legislation to be paid unemployment benefit by the competent institution of the Belgian State, or whether he was entitled to claim it from that of the French State as well;

(2) Whether the fact that he had registered in Belgium as a person seeking work is of such a nature as to require the condition of French legislation that he should be registered in France with the Agence Nationale pour l'Emploi as a person seeking work to be deemed to be fulfilled."

First question

10 Article 13 (2) (a) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 states that "a worker employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State".

11 That general provision, however, which appears in Title II of Regulation No 1408/71, headed "Determination of the Legislation Applicable", applies only in the absence of provision to the contrary in the special provisions relating to the various categories or benefits which constitute Title III of the same regulation.

12 That is precisely the case with Chapter 6 of Title III on unemployment, the provisions of which, as the Court has already held in its judgment of 15 December 1976 (Case 39/76 *Bestuur der Bedrijfsvereniging voor de Metaal-*

nijverheid v *L. J. Mouthaan* [1976] ECR 1901) govern the application of Article 71 (1) (b) (ii) of Chapter 6 so as to ensure that migrant workers receive unemployment benefit in the conditions most favourable to the search for new employment.

13 For that purpose in particular Section 3 of Chapter 6 provides in a single article, Article 71, for the case of unemployed persons who, during their last employment, were residing in a Member State other than the competent State.

14 It must be noted with reference to that provision, and before the content of Article 71, which was cited in the grounds of the Cour de Cassation's judgment referring the questions to this Court, is discussed, that although the criteria on the basis of which the concept of "resident" within the meaning of Article 71 (1) (b) (ii) is to be interpreted were defined by the Court of Justice in its judgment of 17 February 1977 (Case 76/76 *Silvana Di Paolo* v *Office National de l'Emploi* [1977] ECR 315), the national court has stated that the worker whose situation was under consideration by the court was residing in Belgium, and it has not referred any question to this Court as to what is to be understood by the place of residence of a migrant worker. The Court must therefore regard as established the fact that, in the words used in the judgment of the Cour de Cassation, the worker in question "worked in France until made redundant, ... was not registered in France as a person seeking work and resided in Belgium where he had registered as a person seeking work".

15 Article 71 (1) of Regulation No 1408/71 contains different rules according to whether the unemployed person is a frontier worker (under (a)), or other than a frontier worker (under (b)). Whether Mr Aubin was or was not, on the material date for the purposes of the main action, a frontier worker as defined in Article 1 (b) of that regulation is a question for the national court. However, since the Cour de Cassation has referred to both possibilities in the grounds of its judgment without stating whether it considered Mr Aubin to be a frontier worker or not, it is appropriate for the Court to examine the scope of the relevant provisions in both cases, even though Mr Aubin does not appear to have claimed during the proceedings that he should be regarded as a frontier worker.

16 As far as frontier workers are concerned Article 71 (1) (a) provides, first, that "(i) a frontier worker who is partially or intermittently unemployed in the undertaking which employs him shall receive benefits in accordance with the provisions of the legislation of the competent State as if he were residing in the territory of that State; these benefits shall be provided by the competent institution"; and secondly that "(ii) a frontier worker who is wholly unemployed shall receive benefits in accordance with the provisions of 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".

17 It may be seen from the actual words of those provisions that a frontier worker who is wholly unemployed, which appears to have been Mr Aubin's case since the Cour de Cassation states that he was made redundant in France on economic grounds in March 1975, is to receive unemployment benefits in accordance with the provisions of the legislation of his Member State of residence.

18 As far as workers other than frontier workers are concerned Article 71 (1) (b) provides that:

"(i) a worker, other than a frontier worker, who is partially, intermittently or wholly unemployed and who remains available to his employer or to the employment services in the territory of the competent State shall receive benefits in accordance with the provisions of the legislation of that State as though he were residing in its territory; these benefits shall be provided by the competent institution;

(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 the provisions of Article 69, make a claim for benefits under the legislation to which he was last subject."

19 Those provisions offer the worker a choice. He may apply to the unemployment benefit scheme in the State in which he was last employed, or claim benefit in the State where he resides. In the case of a wholly unemployed worker who elects to be governed by the legislation of the State where he resides that choice is made essentially — indeed, exclusively — by the worker's making himself available to the employment office of the State from which he is claiming the benefits. The worker may not, however, either aggregate the unemployment benefit from both States or, if he has made himself available only to the employment office in the territory of the Member State where he resides, claim unemployment benefits from the State in which he was last employed. With regard to that last point the Court stated in its judgment of 9 July 1975 (Case 20/75 *Gaetano d'Amico*, [1975] ECR 891), "the right to unemployment benefit presupposes that the unemployed person is available to the employment bureau at which he is registered, as appears from Chapter 6 of Regulation No 1408/71, in particular Article 69 and 71 thereof".

22 The reply to the first question put by the Cour de Cassation must therefore be that a national of one of the Member States of the European Community, who worked in France until made redundant, who was not registered in France as a person seeking work and who resided in Belgium where he had applied for such registration, is entitled to claim only the unemployment benefits provided for by Belgian legislation, irrespective of whether he has the status of a frontier worker.

Second question

21 In the second question the Cour de Cassation asks the Court of Justice whether registration of a migrant worker as a person seeking work in Belgium may be regarded as a substitute for registration as a person seeking work with the French Agence Nationale pour l'Emploi, such registration being required by French law as a condition for the grant of French unemployment benefit.

23 As has been stated above, by registering for work at the employment offices of the Member State in whose territory he resides and not those of the Member States in whose territory he worked before he became unemployed,

the worker himself chooses to be subject to the legislation on unemployment benefit of the State in which he resides. No principle or rule of Community law runs counter to this finding, or permits, subject to the application of the provisions in Article 69 of Regulation No 1408/71, registration as a person seeking work with the relevant authorities in Belgium to be assimilated to such registration with the French Agence Nationale pour l'Emploi.

23 Although Article 86, which is one of the Miscellaneous Provisions of Regulation No 1408/71, assimilates, in certain circumstances, any claim for benefits in a Member State other than the competent Member State to the claim which ought to have been made in the latter State, the provisions of Article 86 which are intended to facilitate freedom of movement for migrant workers and to simplify the administrative steps to be taken are not, in any case, applicable to a case such as that described by the Cour de Cassation, where registration as a person seeking work does not represent the completion of a simple administrative formality, or is not restricted to the lodging of papers to be forwarded for examination and regularization to the competent authority of another Member State, but has the effect under Community law of determining the competent State for paying unemployment benefit in accordance with its own legislation.

24 The reply to the second question put by the Cour de Cassation must therefore be that no provision of Community law permits the registration of a migrant worker as a person seeking work in Belgium to be assimilated to such registration at the French Agence Nationale pour l'Emploi.

Costs

25 The costs incurred by the French Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As the proceedings are, in so far as the parties to the main

action are concerned, in the nature of a step in the proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the questions referred to it by the French Cour de Cassation by a judgment of 7 July 1981, hereby rules:

1. **A national of one of the Member States of the European Community, who worked in France until made redundant, who was not registered in France as a person seeking work and who resided in Belgium where he had applied for such registration, is entitled to claim only the unemployment benefits provided for by Belgian legislation, irrespective of whether he has the status of a frontier worker.**

2. **No provision of Community law permits the registration of a migrant worker as a person seeking work in Belgium to be assimilated to such registration with the French Agence Nationale pour l'Emploi.**

Due Chloros Grévisse

Delivered in open court in Luxembourg on 27 May 1982.

P. Heim
Registrar

O. Due
President of the Second Chamber