OPINION OF ADVOCATE GENERAL TESAURO
delivered on 16 January 1992 *

Mr President,
Members of the Court,

1. In requesting a preliminary ruling in this case, the Social Security Appeal Tribunal, Bognor Regis, is asking the Court about the validity of Articles 67(3) and 69(1) of Council Regulation No 1408/71.[1] In particular, the national tribunal raises the question whether those provisions are compatible with Article 51 of the EEC Treaty.

Reference should be made to the Report for the Hearing for the details, but I shall briefly summarize the facts in the main proceedings.

2. After working in England, Mr Gray, a United Kingdom national, settled in 1971 on the island of Grand Canary with his wife, where he worked as the manager of the restaurant owned by her. This continued until 11 January 1990, when Mr Gray's wife sold the restaurant. During that time, therefore, he had been paying social security contributions under Spanish law.

Mr Gray remained on Grand Canary until 26 February 1990. However, between 11 January and 26 February 1990 he did not register with the competent Spanish employment office as a person seeking work, since he intended to return as soon as possible to his country of origin. Once he was back in the United Kingdom he claimed unemployment benefits, but these were refused him by virtue of Article 67(3) of Regulation No 1408/71. It was that refusal to grant him those benefits that gave rise to the present proceedings.

3. It should be noted that Article 67(1) and (2) of Regulation No 1408/71 provide that, for the purposes of acquiring, retaining or recovering the right to unemployment benefits, account is to be taken, to the extent necessary, of periods of insurance or employment completed under the legislation of any other Member State. Nevertheless, under Article 67(3) unemployment benefits are granted on condition that the unemployed person has most recently completed periods of insurance or employment 'in accordance with the provisions of the legislation under which benefits are claimed' ° in other words, *on condition that he has most recently completed periods of insurance or employment in the State where he claims the benefit.*

Pursuant to Article 69(1) of Regulation No 1408/71, a wholly unemployed person retains his entitlement to unemployment benefits whilst going to one or more Member States in search of employment, provided that he has been registered with

* Original language: Italian.
1 — OJ, English Special Edition 1971(II), p. 416.

the employment office of the competent State and has remained in that State for at least four weeks before departing for another Member State (subparagraph (a]; a further proviso is that he must have registered as a person seeking work with the employment services of the Member State to which he has gone (subparagraph (b]. The entitlement to benefits continues in any event for only three months (subparagraph (c].

The abovementioned provisions are extremely clear, and it is not in dispute in this case that Mr Gray cannot avail himself in the United Kingdom of Article 67, inasmuch as the last period of insurance was completed in Spain; nor can he rely on Article 69(1), since he had not registered with the employment office before leaving Spain.

In those circumstances the national tribunal decided to refer the matter to this Court, in order to establish whether the provisions at issue are invalid on the grounds of incompatibility with Article 51 of the EEC Treaty because they have the effect of restricting freedom of movement for workers, which is guaranteed by the Treaty.

Accordingly, the issue is whether the provisions of the regulation, by making the rights conferred dependent on fulfilment of those conditions, are such as to impede or at any rate restrict the freedom of movement for workers guaranteed by the Treaty, and in particular Article 51 thereof, under which the Council is required to 'adopt such measures in the field of social security as are necessary to provide freedom of movement for workers'.

4. I would first point out that, in the *Testa* judgment,[2] the Court ruled that '(Article 51) does not prohibit the Community legislature from attaching conditions to the rights and advantages which it accords in order to ensure freedom of movement for workers or from determining the limits thereto'. More generally, and still in the context of freedom of movement for workers, the Court has recently ruled in the *Antonissen* judgment[3] that restrictive conditions are permitted so long as they are not such as to 'jeopardize the effectiveness of the principle of free movement'.

However, it is not disputed that the provisions at issue confer such rights on unemployed persons, so as to prevent their finding themselves at a disadvantage when they move to another Member State in search of work; and they would not enjoy such rights under national law alone. Moreover, whilst it is true that freedom of movement for persons seeking work is a necessary expedient for achieving and enlarging the freedom of movement for workers, I do not consider, in view of the aims pursued by the provisions, that it can reasonably be asserted that the conditions they impose are such as to impede or restrict that freedom.

5. Indeed, the fact that the institution responsible for granting unemployment

2 — Judgment in Joined Cases 41, 121 and 796/79 Testa v Bundesanstalt für Arbeit [1980] ECR 1979, at paragraph 14.

3 — Judgment in Case C-292/89 The Queen v Immigration Appeal Tribunal, ex parte Gustaff D. Antonissen [1991] ECR I-745, at paragraph 21.

benefits can, for the purposes of Article 67(3), only be the institution of the State in which the worker has most recently completed periods of insurance or employment stems from the broader principle — emphasized by this Court on several occasions — that an unemployed person is governed by the laws of the State in which he was last employed. [4]

The same approach must guide the interpretation of Article 69(1), which allows the exportation of unemployment benefits for a period of three months but stipulates that the unemployed person, before moving to another Member State, shall have been registered with the employment office of the State of most recent employment ° the reason being, precisely, that unemployment benefits are granted under the social security legislation of that State, which must refund them to the competent institution of the State to which the unemployed person has gone in search of work.

Basically, therefore, the imposition of the conditions at issue here constitutes a policy decision intended to ensure that the Member State in which the person in question has most recently paid contributions bears the burden of providing benefits. There is at the same time a concern, in the absence of a common labour market, to avoid the exportation of unemployment by encouraging the unemployed to seek work, in the first instance, in the State where they were last employed.

6. Having said that, I must point out that the question before the Court has been partly settled by the recent *Van Noorden* judgment. [5] In that judgment the Court held that 'a person seeking work who has never been subject to the social security legislation of the Member State in which he claims entitlement to unemployment benefits and thus has not most recently completed periods of insurance or employment under the laws of that Member State cannot claim unemployment benefits pursuant to Article 67 of Regulation No 1408/71 but only under Article 69 thereof' (paragraph 10). In the same judgment the Court dismissed the thesis that Article 67 was incompatible with the other relevant provisions of Community law, including Articles 7 and 58 to 66 of the EEC Treaty (paragraph 11).

Turning to the condition in Article 69 requiring registration with the employment office of the State of last employment, I find it wholly consistent with the established scheme, inasmuch as it is the only means whereby the status of 'unemployed' can be defined in accordance with the laws of the State responsible for granting social security benefits.

In short, I consider that the conditions imposed by Articles 67(3) and 69(1) of Regulation No 1408/71 are not such as to impede or restrict the freedom of movement for workers as guaranteed by the Treaty. In particular, the provisions of the regulation which are relevant here do not show any evidence of incompatibility with Article 51 of the EEC Treaty.

4 — See judgments in Cases 145/84 Cochet v Bedrijfsvereniging voor de Gezondheid [1985] ECR 801 and 302/84 Ten Holder v Nieuwe Algemene Bedrijfsvereniging [1986] ECR 1821.

5 — Judgment in Case C-272/90 Van Noorden v Association pour l'Emploi [1991] ECR I-2543.

7. In the light of the foregoing I therefore propose that the Court give the following answer to the questions raised by the Social Security Tribunal, Bognor Regis:

Consideration of the matter submitted for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Articles 67(3) and 69(1) of Council Regulation (EEC) No 1408/71; in particular, they are not incompatible with Article 51 of the EEC Treaty.