

JUDGMENT OF THE COURT
OF 19 JUNE 1980¹

**Vittorio Testa, Salvino Maggio and Carmine Vitale
v Bundesanstalt für Arbeit
(preliminary rulings requested
by the Bayerisches Landessozialgericht,
by the Bundessozialgericht
and by the Hessisches Landessozialgericht)**

“Social security, unemployment benefits”

Joined Cases 41, 121 and 796/79

1. *Social security for migrant workers — Unemployment — Benefits — Unemployed person going to another Member State — Entitlement to benefits maintained — System of Article 69 of Regulation No 1408/71 — Objective*
2. *Social security for migrant workers — Unemployment — Benefits — Unemployed person going to another Member State — Entitlement to benefits maintained — Period of three months — Expiry — Loss of entitlement to benefits — Extent (Regulation No 1408/71 of the Council, Art. 69 (2))*
3. *Social security for migrant workers — Unemployment — Benefits — Unemployed person going to another Member State — Entitlement to benefits maintained — Conditions and limits — Compatibility with the provisions of the EEC Treaty (EEC Treaty, Art. 51; Regulation No 1408/71 of the Council, Art. 69)*
4. *Measures of the institutions — Validity — Infringement of fundamental rights — Assessment in the light of Community law alone*
5. *Community law — General legal principles — Fundamental rights — Right to property — Protection within the Community legal order*
6. *Social security for migrant workers — Unemployment — Benefits — Unemployed person going to another Member State — Entitlement to benefits maintained — Period of three months — Extension — Discretionary power of the national authorities — Limits — Principle of proportionality (Regulation No 1408/71 of the Council, Art. 69 (2))*

¹ — Language of the Case: German.

1. Article 69 of Regulation No 1408/71 is not simply a measure to co-ordinate national laws on unemployment benefits but establishes an independent body of rules in favour of workers claiming the benefit thereof which constitute an exception to national legal rules and which must be interpreted uniformly in all the Member States irrespective of the rules laid down in national law regarding the continuance and loss of entitlement to benefits.
2. Article 69 (2) of Regulation No 1408/71, according to which a worker who returns to the competent State after the three-month period referred to in Article 69 (1) (c) has expired loses "all entitlement" to benefits under the legislation of that State, does not restrict that loss to the time between the expiry of the period and the moment when the worker makes himself available again to the employment services of the competent State. Accordingly, that worker may no longer claim entitlement, by virtue of the first sentence of Article 69 (2), to benefits as against the competent State unless the said period is extended pursuant to the second sentence of Article 69 (2).
3. Article 69 (2) of Regulation No 1408/71 is not incompatible with the provisions of the EEC Treaty concerning freedom of movement for workers in that it limits in time and renders subject to certain conditions the right to continued payment of unemployment benefits.
4. The question of a possible infringement of fundamental rights by a measure of the Community institutions can only be judged in the light of Community law itself.
5. The right to property is one of the fundamental rights the protection of which is guaranteed within the Community legal order, in accordance with the constitutional concepts common to the Member States and in the light of international treaties for the protection of human rights on which Member States have collaborated or to which they are signatories.
6. Whilst the competent services and institutions of the Member States enjoy a wide discretion in deciding whether to extend the three-month period laid down by Article 69 (2) of Regulation No 1408/71, they must, in exercising that discretionary power, take account of the principle of proportionality which is a general principle of Community law. In order correctly to apply that principle in cases such as this, in each individual case the competent services and institutions must take into consideration the extent to which the period in question has been exceeded, the reason for the delay in returning and the seriousness of the legal consequences arising from such delay.