

Case C-35/97

Commission of the European Communities

v

French Republic

(Failure to fulfil obligations — Article 48 of the EC Treaty —
Unemployment benefits —

Award of supplementary retirement pension points — Conditions of dismissal —
Article 7 of Regulation (EEC) No 1612/68 — Frontier workers)

Opinion of Advocate General Alber delivered on 26 March 1998	I - 5327
Judgment of the Court (Fifth Chamber), 24 September 1998	I - 5341

Summary of the Judgment

1. *Social security for migrant workers — Community rules — Substantive scope — Provisions laid down in agreements — Excluded*
(Regulation No 1408/71 of the Council, Art. 1(j))
2. *Freedom of movement for persons — Workers — Equal treatment — Conditions of dismissal — Award of supplementary retirement pension points in the event of early retirement — Benefit denied to frontier workers — Indirect discrimination based on nationality — Not permissible*
(EC Treaty, Art. 48; Regulation No 1612/68 of the Council, Art. 7(1))

1. Supplementary retirement pension schemes introduced under agreements concluded by the competent authorities with trade or inter-trade bodies, trade-union organisations or individual undertakings or under collective agreements concluded by both sides of industry, membership of which has been rendered compulsory by decision of the public authorities, do not constitute legislation within the meaning of the first subparagraph of Article 1(j) of Regulation No 1408/71. Consequently, those schemes — together with a system for the validation of concessionary retirement pension points which forms part thereof — are not covered by that regulation, and cannot be assessed in the light of its provisions.
2. A Member State may not exclude frontier workers who have been placed in early retirement from qualifying for supplementary retirement pension points until they reach normal retirement age. Such a system of validation of retirement pension points, which forms an integral part of the advantages granted to workers in the sector concerned, constitutes one of the conditions applicable to their dismissal, within the meaning of Article 7(1) of Regulation No 1612/68 on freedom of movement for workers within the Community. The equal treatment rule laid down in Article 48 of the Treaty and in Article 7(1) of the regulation prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result. Consequently, a residence condition laid down in relation to the award of retirement pension points, which can more easily be fulfilled by workers possessing the nationality of the Member State concerned — most of whom reside in that State — than by workers from other Member States, is indirectly discriminatory since it is intrinsically liable to affect migrant workers more than national workers and there is a consequent risk that it will place the former at a particular disadvantage.