JUDGMENT OF THE COURT (Second Chamber)

16 February 2006 *

In Case C-185/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Länsrätten i Stockholms län (Sweden), made by decision of 20 April 2004, received at the Court on 22 April 2004, in the proceedings

Ulf Öberg

v

Försäkringskassan, länskontoret Stockholm, formerly Stockholms läns allmänna försäkringskassa,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen, R. Silva de Lapuerta (Rapporteur), G. Arestis and J. Klučka, Judges,

* Language of the case: Swedish.

Advocate General: A. Tizzano,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 November 2005,

after considering the observations submitted on behalf of:

— Ulf Öberg, by him and by J. Hettne,

— the Swedish Government, by A. Kruse, acting as Agent,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the Commission of the European Communities, by D. Martin and K. Simonsson, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Articles 12, 17(2), 18 and 39 EC, Article 7(1) and 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968, p. 2) and Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4).

2 That reference was made in the context of a dispute between Mr Öberg and the Stockholm social insurance office (Försäkringskassan, länskontoret Stockholm, formerly Stockholms läns allmänna försäkringskassa) in relation to the taking into account, for the calculation of the amount of parental benefit, of the period of employment during which Mr Öberg was affiliated to the Joint Sickness Insurance Scheme of the European Communities.

Legal context

3 Chapter 4 of the lag (1962:381) om allmän försäkring (Swedish law on the general social security scheme) ('the AFL') lays down provisions on parental benefits.

4 Under Chapter 4(3) of the AFL parental benefit is paid to parents by reason of the birth of a child for a maximum of 450 days and can be paid at any time until the child reaches the age of eight or completes his or her first year at school, if that should be later.

5 Chapter 4(6) of the AFL provides that the total minimum amount of the parental benefit is SKR 60 per day ('the guaranteed amount'). It also provides that, for the first 180 days, the parental benefit is paid out at the same rate as daily sickness benefit, if the parent concerned had sickness insurance cover providing for sickness benefit of more than the guaranteed amount for at least 240 consecutive days before the birth or the due date of birth.

6 Under Chapter 3(2) of the AFL daily sickness benefit is based on the annual income the insured can currently expect to receive, unless his circumstances change, for work he does in Sweden.

The main proceedings and the questions referred for a preliminary ruling

7 After working at the Court of Justice of the European Communities from 1995 to 2000 Mr Öberg, who is a Swedish national, returned to Sweden. He is the father of a child born on 22 September 1999.

8 The Stockholm social insurance office refused, by decisions of 28 August and 16 November 2001, to pay Mr Öberg parental benefit in relation to daily sickness allowance for the first 180 days of his parental leave, on the ground that, during the period prior to the birth of his child, he was employed by the Court of Justice and was thus not insured by the national sickness insurance scheme for the sickness benefits above the guaranteed amount for at least 240 consecutive days immediately before the date of birth or due date of birth.

9 Mr Öberg brought an action against those decisions before the Länsrätten i Stockholms län which decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Is a requirement in national legislation that a parent have been resident and be covered by health insurance in the Member State in question for at least 240 days prior to the child's birth in order to be entitled to parental benefit in accordance with the parent's sickness benefit compatible with Articles 12, 17(2), 18 and 39 EC, Article 7(1) and 7(2) of Regulation No 1612/68 and Directive 96/34 ...?

(2) If question (1) is answered in the affirmative: does Community law require that, in the determination of whether the worker fulfils the qualification period for insurance under national law, there must be cumulation with a period during which the worker was covered by the Joint Sickness insurance scheme pursuant to the Staff Regulations of Officials of the European Communities?'

Concerning the questions

10 With its two preliminary questions, which it is appropriate to examine together, the national court is essentially asking whether, where national rules such as those at issue in the main proceedings apply, Community law and the provisions on the freedom of movement of persons in particular must be interpreted as meaning that the working period during which a worker was affiliated to the Joint Sickness Insurance Scheme of the European Communities must be taken into account.

11 According to settled case-law, any Community national who, irrespective of his place of residence and his nationality, has exercised the right to freedom of movement for workers and who has been employed in a Member State other than that of residence falls within the scope of Article 39 EC (Case C-385/00 *de Groot* [2002] ECR I-11819, paragraph 76; Case C-232/01 *Van Lent* [2003] ECR I-11525, paragraph 14; and Case C-209/01 *Schilling and Fleck-Schilling* [2003] ECR I-13389, paragraph 23).

12 In addition, it must be pointed out that an official of the European Communities has the status of a migrant worker. It is also apparent from settled case-law that a Community national working in a Member State other than his State of origin does not lose his status of worker within the meaning of Article 39(1) EC through occupying a post within an international organisation, even if the rules relating to his entry into and residence in the country in which he is employed are specifically governed by an international agreement (Joined Cases 389/87 and 390/87 *Echternach and Moritz* [1989] ECR 723, paragraph 11; *Schilling and Fleck-Schilling*, paragraph 28; and Case C-293/03 *My* [2004] ECR I-12013, paragraph 37).

13 It follows that a worker, such as Mr Öberg, who is a national of a Member State may not be refused the rights and social advantages which Article 39 EC affords him (*Echternach and Moritz*, paragraph 12, and *My*, paragraph 38).

14 The Court has also held that the provisions of the EC Treaty relating to the free movement of persons are intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and preclude measures which might place Community citizens at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (Case C-370/90 *Singh* [1992] ECR I-4265, paragraph 16; *de Groot*, paragraph 77; and *Van Lent*, paragraph 15).

15 In that regard, provisions which preclude or deter a national of a Member State from leaving his country of origin to exercise his right to freedom of movement constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned (*de Groot*, paragraph 78; *Van Lent*, paragraph 16; and *Schilling and Fleck-Schilling*, paragraph 25).

16 National legislation which does not take into account, for the calculation of the amount of parental benefit, periods of employment completed under the Joint Sickness Insurance Scheme of the European Communities is likely to dissuade citizens of a Member State from working within an institution of the European Union situated in another Member State since by accepting employment with such an institution they lose the right to benefit under the national sickness insurance scheme from family benefits to which they would have been entitled had they not accepted that employment (see to that effect, *My*, paragraph 47).

17 Consequently, national legislation such as that in dispute in the main proceedings constitutes a barrier to the free movement of workers which is, as a rule, prohibited by Article 39 EC.

18 It is however necessary to examine whether that barrier is capable of being justified in the light of the provisions of the Treaty.

19 According to the Court's case-law, a measure restricting one of the fundamental freedoms guaranteed by the Treaty may be justified only if it pursues a legitimate objective which is compatible with the Treaty and respects the principle of proportionality. For that reason, such a measure must be appropriate for securing the attainment of the objective which it pursues and must not go beyond what is necessary in order to attain it (see, in particular, Case C-19/92 *Kraus* [1993] ECR I-1663, paragraph 32, and Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraph 43).

20 The Swedish Government submits that the AFL is based on objective considerations which are independent of the nationality of the persons concerned and proportionate to the objective which it legitimately pursues of combating abuse as regards the application of the principle of aggregation of insured periods. According to that government, granting parental benefit which is greater than that guaranteed to migrant workers who have been employed within an institution of the European Union would place a considerable financial burden on national social security schemes in such a way that Member States which, like the Kingdom of Sweden, pay a higher amount of parental benefit could be forced to reduce those amounts.

21 In that regard, considerations of a purely economic nature do not justify infringements of individual rights deriving from provisions of the Treaty enshrining the freedom of movement of workers.

22 It must, however, be borne in mind that the reasons which may be invoked by a Member State by way of justification must be accompanied by an analysis of the appropriateness and proportionality of the restrictive measure adopted by that State (Case C-8/02 *Leichtle* [2004] ECR I-2641, paragraph 45).

23 It must be noted that, in the present case, such an analysis is lacking. The Swedish Government merely alludes, without providing any precise elements to substantiate its arguments, to a hypothetical financial burden which would be put on the national social security scheme if the period of employment carried out by a migrant worker under the Joint Sickness Insurance Scheme of the European Communities were to be taken into account when applying Chapter 4(6) of the AFL.

24 It follows that there is no justification for the barrier to the freedom of movement of workers which results from the refusal to take into account, for the calculation of the amount of parental benefit, periods worked by migrant workers under the Joint Sickness Insurance Scheme of the European Communities.

25 In the light of the above considerations it is not necessary that the Court give judgment on the interpretation of Articles 12, 17 and 18 EC, Article 7(1) and 7(2) of Regulation No 1612/68 or Directive 96/34.

26 In those circumstances, the answer to the questions referred for preliminary ruling must be that Article 39 EC is to be interpreted as meaning that, where national legislation such as that at issue in the main proceedings applies, the period during which a worker was affiliated to the Joint Sickness Insurance Scheme of the European Communities must be taken into account.

Costs

27 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 39 EC is to be interpreted as meaning that, where national legislation such as that at issue in the main proceedings applies, the period during which a worker was affiliated to the Joint Sickness Insurance Scheme of the European Communities must be taken into account.

[Signatures]