

Case C-212/06

Government of the French Community and Walloon Government

v

Flemish Government

(Reference for a preliminary ruling from the Cour d'arbitrage,
now the Cour constitutionnelle (Belgium))

(Care insurance scheme established by a federated entity of a Member
State — Exclusion of persons residing in part of the national territory
other than that falling within the competence of that entity —
Articles 18 EC, 39 EC and 43 EC — Regulation (EEC) No 1408/71)

Opinion of Advocate General Sharpston delivered on 28 June 2007 I - 1687

Judgment of the Court (Grand Chamber), 1 April 2008 I - 1730

Summary of the Judgment

- 1. Social security for migrant workers — Community legislation — Scope ratione materiae
(Council Regulation No 1408/71, Art. 4)*

2. *Preliminary rulings — Jurisdiction of the Court — Limits — Purely internal situations*
(Arts 17 EC, 18 EC and 234 EC)
3. *Social security for migrant workers — Competence of federated entities of a Member State to organise their social security systems — Limits*
(Arts 39 EC and 43 EC)
4. *Social security for migrant workers — Competence of federated entities of a Member State to organise their social security systems — Limits*
(Arts 39 EC and 43 EC)

1. Benefits provided under a care insurance scheme giving the right, objectively and on the basis of a statutorily defined position, to reimbursement by a care insurance fund of the costs incurred in respect of the provision of help and non-medical services by any person whose autonomy is reduced by reason of serious and prolonged disability, fall within the scope *ratione materiae* of Regulation No 1408/71.

Furthermore, such a care insurance scheme, governed by provisions of domestic law applicable to part only of the territory of a Member State, cannot be excluded from the ambit of Regulation No 1408/71 if it is funded, at the very least in part, by contributions paid by the persons insured, and is not mentioned in Annex II, Section III, to that regulation.

(see paras 19-23, operative part 1)

Benefits intended to improve the state of health and quality of life of persons reliant on care have as their essential purpose the supplementing of sickness insurance benefits and must accordingly be regarded as 'sickness benefits' for the purpose of Article 4(1)(a) of that regulation.

2. Community law cannot be applied to purely internal situations. It is not possible to raise against that conclusion the principle of citizenship of the Union set out in Article 17 EC, which includes, in particular, according to Article 18 EC, the right of every citizen of the Union to move and reside freely within the territory of the Member States. Citizenship of the Union is not intended to

extend the material scope of the Treaty to internal situations which have no link with Community law. Nevertheless, interpretation of provisions of Community law may possibly be of use to the national court, having regard too to situations classed as purely internal, in particular if the law of the Member State concerned were to require every national of that State to be allowed to enjoy the same rights as those which a national of another Member State would derive from Community law in a situation considered to be comparable by that court.

(see paras 38-40)

3. On a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State, such as that governing care insurance, limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme to persons either residing in the territory coming within that entity's competence or pursuing an activity in that territory but residing in another Member State, is contrary to

those provisions, in so far as such limitation affects nationals of other Member States or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.

Those articles of the Treaty militate against any national measure which, even though applicable without discrimination on grounds of nationality, is capable of hindering or rendering less attractive the exercise by Community nationals of the fundamental freedoms guaranteed by the Treaty. For a measure to restrict freedom of movement, it is not necessary for it to be based on the nationality of the persons concerned or even for it to have the effect of bestowing an advantage on all national workers or of operating to the detriment solely of nationals of other Member States, but not of national workers. It is enough that the measure should benefit certain categories of persons pursuing occupational activity in the Member State in question.

In addition, the articles of the Treaty relating to the free movement of goods, persons, services and capital are funda-

mental provisions for the Community and any restriction, even minor, of that freedom is prohibited.

(see paras 45, 50, 52, 60,
operative part 2)

mitigate against legislation of a federated entity of a Member State limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme only to persons residing in that entity's territory, in so far as such limitation affects nationals of other Member States working in that entity's territory or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.

4. On a proper construction of Articles 39 EC and 43 EC, those provisions

(see para. 63, operative part 3)