



## Reports of Cases

Case C-443/11

F.P. Jeltens and Others

v

**Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen**

(Request for a preliminary ruling from the Rechtbank Amsterdam)

(Social security for migrant workers — Article 45 TFEU — Regulation (EEC) No 1408/71 — Article 71 — Wholly unemployed atypical frontier workers who have maintained personal and business links in the Member State of last employment — Regulation (EC) No 883/2004 — Article 65 — Right to benefit in the Member State of residence — Refusal to pay by the Member State of last employment — Admissibility — Relevance of the judgment of the Court of 12 June 1986 in Case 1/85 Miethé — Transitional provisions — Article 87(8) — Concept of ‘unchanged situation’)

Summary — Judgment of the Court (Third Chamber), 11 April 2013

1. *Social security — Migrant workers — Unemployment — Wholly unemployed frontier workers who have retained special personal and business links in the Member State in which they were last employed — Right to benefits in the Member State of residence — Application of Article 65 of Regulation No 883/2004 — Right, as a supplementary step, to make oneself available to the employment services of the Member State in which one pursued last activity as an employed or self-employed person*

*(European Parliament and Council Regulation No 883/2004, as amended by Regulation No 988/2009, Art. 65)*

2. *Social security — Migrant workers — Unemployment — Wholly unemployed frontier workers who have retained special personal and business links in the Member State in which they were last employed — Refusal to pay unemployment benefit by the Member State where last employed — Residence condition laid down by national law — Lawfulness — Restriction of freedom of movement for workers — None*

*(Art. 45 TFEU)*

3. *Social security — Migrant workers — Unemployment — Wholly unemployed frontier workers who have retained special personal and business links in the Member State in which they were last employed — Application of transitional provisions of Regulation No 883/2004 — Concept of ‘unchanged situation’ — Determination by the national court*

*(European Parliament and Council Regulation No 883/2004, as amended by Regulation No 988/2009, Art. 87(8))*

1. After the entry into force of Regulation No 883/2004 on the coordination of social security systems, as amended by Regulation No 988/2009, the provisions of Article 65 of that regulation are not to be interpreted in the light of the judgment in *Miethe* (Case 1/85). With regard to a wholly unemployed frontier worker who has maintained close personal and business links with the Member State where he was last employed of such a kind that his prospects of reintegration into working life are greatest in that State, Article 65 of Regulation No 883/2004 must be understood as allowing such a worker to make himself available as a supplementary step to the employment services of that State, not with a view to obtaining unemployment benefit in that State but only in order to receive assistance there in finding new employment.

(see para. 36, operative part 1)

2. The rules on the freedom of movement for workers, contained in particular in Article 45 TFEU, must be interpreted as not precluding the Member State where the person was last employed from refusing, in accordance with its national law, to grant unemployment benefit to a wholly unemployed frontier worker whose prospects of reintegration into working life are best in that Member State, on the ground that he does not reside in its territory, since, in accordance with the provisions of Article 65 of Regulation No 883/2004 on the coordination of social security systems, as amended by Regulation No 988/2009, the applicable legislation is that of the Member State of residence.

Those rules on freedom of movement of the TFEU Treaty cannot guarantee to an insured person that a move to another Member State will be neutral as regards social security. In view of the disparities existing between the schemes and legislation of the Member States in this field, such a move may, depending on the case, be more or less financially advantageous or disadvantageous for the person concerned.

A difference between the benefit provided for in the legislation of the Member State of last employment and that granted pursuant to the legislation of the Member State of residence cannot be considered as a restriction on the freedom of movement for workers, since it results from the lack of harmonisation of EU law in the matter.

(see paras 44-46, operative part 2)

3. Article 87(8) of Regulation No 883/2004 on the coordination of social security systems, as amended by Regulation No 988/2009, must be applied to wholly unemployed frontier workers who, taking into account the links they have maintained in the Member State where they were last employed, receive unemployment benefit from it on the basis of the legislation of that Member State, pursuant to Article 71 of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008.

Article 87(8) of Regulation No 883/2004 provides, in favour of a person who, as a result of that regulation, is subject to the legislation of a Member State other than that to whose legislation he was subject under Title II of Regulation No 1408/71, for the continued application of the latter legislation for a certain period, provided that the relevant situation remains unchanged.

In that regard, the fact that Article 71 of Regulation No 1408/71 falls under Title III of Regulation No 1408/71 does not preclude the application of the aforementioned Article 87.

The concept of ‘unchanged situation’ within the meaning of Article 87(8) of Regulation No 883/2004, as amended, must be assessed in the light of national social security legislation. It is for the national court to establish whether the workers satisfy the conditions provided for in that legislation in order to be able to claim resumption of payment of the unemployment benefit which was paid to them under that legislation, in accordance with Article 71 of Regulation No 1408/71, as amended.

(see paras 49, 56, 61, 62, operative part 3)