



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

4 February 2015 *

(Reference for a preliminary ruling — Social security — Conditions governing eligibility for unemployment benefit in a Member State — Taking into account periods of work completed as a member of the contract staff of an institution of the European Union which is established in that Member State — Treatment of days of unemployment for which an allowance is paid under the Conditions of Employment of Other Servants of the European Communities as working days — Principle of sincere cooperation)

In Case C-647/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour du travail de Bruxelles (Belgium), made by decision of 27 November 2013, received at the Court on 6 December 2013, in the proceedings

Office national de l'emploi

v

Marie-Rose Melchior,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader, E. Jarašiūnas (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Ms Melchior, by S. Capiou, avocat,
- the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents,
- the European Commission, by G. Gattinara and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 October 2014,

gives the following

* Language of the case: French.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the principle of sincere cooperation and of Article 34(1) of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between the Office national de l'emploi (National Employment Office; 'ONEM') and Ms Melchior concerning that body's refusal to grant Ms Melchior unemployment benefit.

Legal context

EU law

- 3 Article 96 of the Conditions of Employment of Other Servants of the European Communities, established by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968 (I), p. 30) as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 (OJ 2004 L 124, p. 1) ('the Conditions of Employment'), provides:

'1. A former member of the contract staff who becomes unemployed when his service with an institution of the Community is terminated, and:

- (a) who is not in receipt of a retirement pension or invalidity allowance from the Community,
- (b) whose service is not terminated by resignation or by cancellation of the contract for disciplinary reasons,
- (c) who has completed a minimum of six months' service,
- (d) who is resident in a Member State,

shall be eligible for a monthly unemployment allowance under the conditions laid down below.

Where he is entitled to unemployment benefits under a national scheme, he shall be obliged to declare this to the institution to which he belonged, which shall immediately inform the Commission thereof. In such cases, the amount of those benefits shall be deducted from the allowance paid under paragraph 3.

2. To be eligible for this unemployment allowance, a former member of the contract staff shall:

- (a) be registered, at his own request, as seeking employment with the employment authorities of the Member State in which he establishes his residence;
- (b) fulfil the obligations laid down by the law of that Member State for persons in receipt of unemployment benefits under that law;
- (c) forward every month to the institution to which he belonged, which shall immediately forward it to the Commission, a certificate issued by the competent national employment authority stating whether or not he has fulfilled the obligations and conditions referred to in (a) and (b).

The allowance may be granted or maintained by the Community, even where the national obligations referred to under (b) have not been fulfilled, in cases of illness, accident, maternity, invalidity or a situation recognised as being similar or where the national authority, competent to meet those obligations, has given a dispensation.

...

7. Members of the contract staff shall contribute one third of the financing of the unemployment insurance scheme. ...

...

9. The national departments with responsibility for employment and unemployment, acting in accordance with their national legislation, and the Commission shall cooperate with each other in an effective manner in order to ensure that this Article is properly applied.

...'

Belgian law

4 Article 30 of the Royal Decree of 25 November 1991 on unemployment (arrêté royal du 25 novembre 1991 portant réglementation du chômage; *Moniteur belge* of 31 December 1991, p. 29888; 'the Royal Decree') in the version applicable at the material time provides that, in order to qualify for unemployment benefit, a full-time worker over the age of 50 must complete a period of 624 working days during the 36 months preceding the application for benefits.

5 Article 37(1) of the Royal Decree provides:

'... normal work actually performed and additional services without compensatory rest shall be taken into account as work when carried out in an occupation or undertaking subject to social security in respect of unemployment and, contemporaneously:

1. payment of remuneration corresponding at least to the minimum wage, established by a legislative or regulatory provision or a collective labour agreement that binds the undertaking or, failing this, by usage, has been made;
2. the regulatory deductions for social security, including those in respect of unemployment, have been applied to the remuneration paid.

...'

6 Article 37(2) of the Royal Decree states:

'Work carried out abroad shall be taken into account if it was carried out in employment which would give rise, in Belgium, to social security deductions, including those in respect of unemployment.

However, the first subparagraph shall apply only if, after the work carried out abroad, the worker has completed periods of work as an employed person under Belgian legislation.'

7 Under Article 38(1)(1)(a) of the Royal Decree, days which have given rise to payment of an allowance under the legislation relating to unemployment insurance are to be treated as working days for the purposes of the application of Article 30 et seq. of the Royal Decree.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 8 As is clear from the order for reference, Ms Melchior, a Belgian national, had various jobs as an employed person in Belgium before working at the Commission of the European Communities in Brussels from 1 March 2005 to 29 February 2008 as a member of the contract staff.
- 9 By decision of 5 March 2008, ONEM refused the application for unemployment benefit which she had made on 1 March 2008. The ground for refusal was that she did not show that she had completed 624 working days during the 36 months preceding her application, as ONEM did not take into account the period during which she worked at the Commission.
- 10 After being granted entitlement to the unemployment allowance provided for by the Conditions of Employment for a period of 12 months from 1 March 2008 and being employed in various jobs in Belgium between 20 August 2008 and 13 July 2009, Ms Melchior made another application for unemployment benefit, which was refused by a decision of ONEM dated 26 August 2009, once again on the ground that she did not show that she had completed 624 working days during the 36 months preceding the application, namely in the period from 14 July 2006 to 14 July 2009.
- 11 In determining the number of working days completed, ONEM accepted only the periods corresponding to those various jobs. It refused, first, to take the period of activity completed in the service of the Commission into account as a period of work carried out abroad for the purposes of Article 37(2) of the Royal Decree and, second, to treat, on the basis of Article 38(1)(1)(a) of that decree, the period of unemployment for which an allowance was paid under the Conditions of Employment as a period of work.
- 12 Ms Melchior contested ONEM's decision of 26 August 2009 before the tribunal du travail de Bruxelles (Labour Court, Brussels), which, by judgment of 14 February 2012, annulled that decision, declared that Ms Melchior qualified for unemployment benefit from 14 July 2009 and ordered ONEM to pay the benefit due from that date.
- 13 ONEM appealed against that judgment to the cour du travail de Bruxelles (Higher Labour Court, Brussels), requesting it to set the judgment aside and restore the decision of 26 August 2009.
- 14 In the order for reference, the cour du travail de Bruxelles states that the deductions referred to by Article 37(1) of the Royal Decree are those provided for by Belgian legislation and that, without prejudice to any effect of EU law, the Royal Decree does not require account to be taken of deductions made, as the case may be in Belgium, under an unemployment regime other than the one set up by Belgium. It observes, consequently, that, irrespective of EU law, the court of first instance could not hold that any deductions made under the Conditions of Employment are deductions within the meaning of Article 37(1) of the Royal Decree.
- 15 In its examination of the requirements that may arise from EU law as regards the taking into account of periods of activity completed in the service of a European institution established in Belgium, the cour du travail de Bruxelles, referring to the judgments in *Ferlini* (C-411/98, EU:C:2000:530, paragraph 41) and *My* (C-293/03, EU:C:2004:821, paragraph 35) and to the order in *Ricci and Pisaneschi* (C-286/09 and C-287/09, EU:C:2010:420, paragraph 26), holds that Ms Melchior cannot be treated as a 'worker' within the meaning of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) or Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1). It also holds that a worker who, like Ms Melchior, worked for a European institution established in Belgium and who did not

work beforehand anywhere other than in that Member State is not able to rely on the provisions of the FEU Treaty guaranteeing freedom of movement for workers, as they do not apply to situations which are purely internal.

- 16 The cour du travail de Bruxelles observes, however, that the Court of Justice has found on various occasions that Belgian legislation on pensions did not sufficiently ensure the portability of the rights of a worker who was employed in the service of both a Belgian employer and a European institution. It cites in this regard the judgments in *Commission v Belgium* (137/80, EU:C:1981:237, paragraph 19) and *My* (EU:C:2004:821). It expresses doubts as to ONEM's argument that the reasoning followed in the latter judgment is based on the existence of a specific provision concerning pensions and therefore cannot be transposed to the unemployment insurance regime, observing that the approach adopted by the Court in that judgment seems to relate to the principle of sincere cooperation. It adds that that approach has been applied in respect of not only pensions but also parental allowances and family allowances, as well as in relation to a tax advantage.
- 17 The cour du travail de Bruxelles considers that it could be inferred from that case-law that the principle of sincere cooperation, as laid down in Article 4(3) TEU, precludes the application of Articles 37 and 38(1)(1)(a) of the Royal Decree in the manner interpreted by ONEM. It also appears to it to be possible that there is a contradiction with Article 34(1) of the Charter, the first subparagraph of which, according to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), is based, inter alia, on Article 12 of the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996.
- 18 In those circumstances, the cour du travail de Bruxelles decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Do the principle of sincere cooperation and Article 4(3) TEU, on the one hand, and Article 34(1) of the [Charter], on the other, preclude a Member State, in relation to the issue of qualifying for unemployment benefit, from refusing:

- to take account of periods of work as a member of the contract staff of an EU institution established in that Member State, in particular where, both before and after the period of employment as a member of the contract staff, work was performed as an employed person under the legislation of that Member State;
- to treat days of unemployment for which payment is made under the [Conditions of Employment] as working days, although days of unemployment for which payment is made in accordance with the legislation of that Member State are so treated?'

Consideration of the question referred

- 19 It should be pointed out first of all that the decision by ONEM at issue in the main proceedings was taken on 26 August 2009, that is to say, before the Treaty of Lisbon entered into force.
- 20 Therefore, by its question the national court asks, in essence, whether Article 10 EC and Article 34(1) of the Charter preclude legislation of a Member State, such as that at issue in the main proceedings, which is interpreted as meaning that, in relation to eligibility for unemployment benefit, periods of work completed as a member of the contract staff in an EU institution established in that Member State are not taken into account and days of unemployment which have given rise to payment of an unemployment allowance pursuant to the Conditions of Employment are not treated as working days although days of unemployment for which benefit has been paid under the legislation of that Member State are so treated.

- 21 It should be remembered that EU law does not detract from the power of the Member States to organise their social security systems and that, in the absence of harmonisation at EU level, it is for the legislation of each Member State to determine the conditions for the grant of social security benefits. Nevertheless, the Member States must comply with EU law when exercising that power (see inter alia, to this effect, judgments in *Kristiansen*, C-92/02, EU:C:2003:652, paragraph 31, and *Elchinov*, C-173/09, EU:C:2010:581, paragraph 40).
- 22 It should also be remembered that the Conditions of Employment, like the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), were adopted by means of a Council regulation, Regulation No 259/68, which, by virtue of the second paragraph of Article 249 EC, has general application, is binding in its entirety and is directly applicable in all Member States. It follows that, in addition to having effects within the EU administration, the Conditions of Employment are also binding on Member States in so far as their cooperation is necessary in order to give effect to those conditions (judgments in *Commission v Belgium*, EU:C:1981:237, paragraphs 7 and 8; *Commission v Belgium*, 186/85, EU:C:1987:208, paragraph 21; and *Kristiansen*, EU:C:2003:652, paragraph 32).
- 23 The Belgian Government explains that in Belgium the unemployment regime is founded on a principle of solidarity which entails prior payment of contributions. In its submission, the conditions governing the grant of unemployment benefit laid down by that regime do not infringe any rule of EU law and, in particular, any specific provision of the Conditions of Employment. Accordingly, it considers that the approach adopted in the judgment in *My* (EU:C:2004:821) cannot be transposed to the main proceedings.
- 24 It is true that Article 96(1) of the Conditions of Employment, which provides for an unemployment allowance to be paid under certain conditions to a former member of the contract staff who becomes unemployed when his service with an EU institution is terminated, does not entail, in itself, any restriction on the Member States' power to determine the conditions governing the grant of the benefits provided for by their national regime other than the restriction resulting from that article that they respect the complementary character of the unemployment allowance provided for in that article vis-à-vis the unemployment benefit that the former member of the contract staff might be able to claim under the national regime.
- 25 However, the Court held in the judgment in *My* (EU:C:2004:821) that Article 10 EC, in conjunction with the Staff Regulations, must be interpreted as precluding national legislation which does not permit years of employment completed by an EU national in the service of an EU institution to be taken into account for the purposes of entitlement to an early retirement pension under the national scheme. In the order in *Ricci and Pisaneschi* (EU:C:2010:420), the Court stated that the same applies as regards entitlement to an ordinary retirement pension.
- 26 In so deciding, the Court did not rely on a specific provision of the Staff Regulations but held in paragraphs 45 to 48 of the judgment in *My* (EU:C:2004:821), referring to the judgment in *Commission v Belgium* (EU:C:1981:237), that, like the refusal to adopt the measures necessary for the transfer to the Community pension scheme of sums due to be repaid in respect of or the actuarial equivalent of retirement pension rights acquired under the national pension scheme, as provided for by Article 11(2) of Annex VIII to the Staff Regulations, such legislation could impede the recruitment by the EU institutions of national officials with a certain length of service. The Court pointed out that such legislation was liable to discourage employment within such an institution, inasmuch as, by accepting employment with one of them, a worker who was formerly a member of a national pension scheme risked losing the right to benefit under that scheme from an old-age pension to which he would have been entitled had he not accepted that employment. It held that such consequences could not be accepted in the light of the duty of genuine cooperation and assistance which Member States owe the European Union and which finds expression in the obligation laid down in Article 10 EC to facilitate the achievement of its tasks.

- 27 Legislation of a Member State that does not take into account, in relation to eligibility for unemployment benefit, periods of work completed as a member of the contract staff in an EU institution established in that Member State is also such as to impede the recruitment by those institutions of contract staff. As the Advocate General has observed in points 51 to 53 of his Opinion, legislation of that kind is liable to deter workers resident in that Member State from engaging in employment in an EU institution the duration of which, as limited by regulation, means that they face the prospect of having, sooner or later, to enter or re-enter the national labour market, since, owing to that employment, they may not reach the number of working days that is required by that legislation to claim benefits in the event of unemployment.
- 28 Such legislation may give rise to the same deterrent effect as regards the failure to treat days of unemployment which have given rise to payment of an unemployment allowance pursuant to the Conditions of Employment as working days for the purpose of eligibility for unemployment benefit in that Member State, given that days of unemployment for which benefit has been paid under the legislation of that Member State are so treated.
- 29 Consequently, without there being any need to examine the question referred in the light of Article 34(1) of the Charter, the answer to that question is that Article 10 EC, in conjunction with the Conditions of Employment, precludes legislation of a Member State, such as that at issue in the main proceedings, which is interpreted as meaning that, in relation to eligibility for unemployment benefit, periods of work completed as a member of the contract staff in an EU institution established in that Member State are not taken into account and days of unemployment which have given rise to payment of an unemployment allowance pursuant to the Conditions of Employment are not treated as working days although days of unemployment for which benefit has been paid under the legislation of that Member State are so treated.

Costs

- 30 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 (Third Chamber) hereby rules:

Article 10 EC, in conjunction with the Conditions of Employment of Other Servants of the European Communities established by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, precludes legislation of a Member State, such as that at issue in the main proceedings, which is interpreted as meaning that, in relation to eligibility for unemployment benefit, periods of work completed as a member of the contract staff in an institution of the European Union established in that Member State are not taken into account and days of unemployment which have given rise to payment of an unemployment allowance pursuant to the Conditions of Employment of Other Servants of the European Communities are not treated as working days although days of unemployment for which benefit has been paid under the legislation of that Member State are so treated.

[Signatures]