

JUDGMENT OF THE COURT (Second Chamber)
27 March 1985 *

In Case 249/83

REFERENCE to the Court of Justice under Article 177 of the EEC Treaty by the Arbeidsrechtbank [Labour Tribunal], Antwerp (Sixth Chamber) for a preliminary ruling in the action pending before that court between

Vera Hoeckx, residing at Kalmthout (Belgium),

and

Openbaar Centrum voor Maatschappelijk Welzijn [Public Social Welfare Centre],
Kalmthout,

on the interpretation of Article 3 (1) and Article 4 (1), (2) and (4) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) and of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475),

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann,
Judges,

Advocate General: M. Darmon

Registrar: J. A. Pompe, Deputy Registrar

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gives the following

* Language of the Case: Dutch.

** after considering the observations submitted on behalf of the United Kingdom by Mrs G. Dagtoglou, acting as Agent, the Commission of the European Communities by Mr J. Griesmar, assisted by Mr F. Herbert, after hearing the Opinion of the Advocate General delivered at the sitting on 29 November 1984,

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

- 1 By a judgment of 28 October 1983 which was received at the Court on 10 November 1983, the Arbeidsrechtbank, Antwerp referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of Article 3 (1) and Article 4 (1), (2) and (4) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) and of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).
- 2 The questions were raised in proceedings between the Openbaar Centrum voor Maatschappelijk Welzijn of Kalmthout [hereinafter 'the Centre'] and Mrs Vera Hoeckx, the plaintiff in the main proceedings, who was born in Kalmthout but is of Netherlands nationality, for the grant of a minimum subsistence allowance, the minimum means of subsistence (known and hereinafter referred to as the 'minimex'), which was introduced by the Belgian Law of 7 August 1974 (Moniteur belge of 18 September 1974, p. 11363).
- 3 Until June 1981, Mrs Hoeckx lived in Belgium and drew unemployment benefit there. She then moved to France, where she continued to receive unemployment benefit. When she returned to Belgium in January 1982, she applied for and was granted the 'minimex'. On 28 May 1982, she again moved to France, and payment of the 'minimex' was discontinued. On her subsequent return to Belgium, she realized that she could not claim unemployment benefit and submitted a fresh application for the 'minimex' on 19 April 1983.
- 4 That application was rejected by a decision of 28 April 1983 of the Raad voor Maatschappelijk Welzijn [Social Welfare Council] of Kalmthout. On 9 May 1983, Mrs Hoeckx brought an action against that decision before the Arbeidsrechtbank, Antwerp.

5 The Arbeidsrechtbank has found that the decision to refuse her application is based on Article 1 of the Royal Decree of 8 January 1976 (Moniteur belge of 13 January 1976), which provides that nationals of Member States of the European Economic Community are entitled to the 'minimex' provided, *inter alia*, that they 'have actually resided in Belgium for at least the five years immediately preceding the date on which the minimum means of subsistence is awarded.' It considers that the sole point at issue is whether the 'minimex' may or should be refused in Mrs Hoeckx's case merely because she lived in France for part of the five years preceding her application. According to the Arbeidsrechtbank, the residence requirement laid down by Article 1 of the Royal Decree applies only to Community nationals other than Belgians. On that basis the Arbeidsrechtbank referred the following questions to the Court:

- '(1) Does the right to a minimum means of subsistence provided for by the Law of 7 August 1974 fall within the material scope of Regulation No 1408/71 of the Council of 14 June 1971 (Article 4 (1) and (2)) or does it constitute "social assistance" within the meaning of Article 4 (4)?

- (2) In so far as it provides that, in order to be entitled to the minimum means of subsistence, nationals of EEC Member States must have actually resided in Belgium for at least the five years immediately preceding the date on which the minimum means of subsistence is awarded, which it does not require of Belgian nationals, is Article 1 of the Royal Decree of 8 January 1976 concerning the minimum means of subsistence contrary to the Treaty and Regulation No 1408/71 (and more specifically to Article 3 (1) thereof concerning equal treatment)?

- (3) Is the minimum means of subsistence provided for by the Law of 7 August 1974 a "social advantage" within the meaning of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community?

- (4) As a subsidiary question, is it consistent with the aforementioned regulations that, for the purposes of the residence requirement which nationals of EEC Member States must satisfy in order to qualify for the minimum means of subsistence, only periods of residence in Belgium are taken into account, or should periods of residence in another EEC Member State be treated in the same way as periods of residence in Belgium?'

- 6 The United Kingdom and the Commission of the European Communities have submitted written observations. The Commission has also presented oral observations at the hearing.
- 7 The United Kingdom takes the view that the most important question to determine is whether consideration of each individual case is an essential feature of the Law of 17 August 1974. That is the criterion identified by the Court in its judgment of 22 June 1972 (Case 1/72 *Frilli v Belgium* [1972] ECR 457) as a means of characterizing social assistance. The United Kingdom considers that that criterion is not satisfied in this case because the right to the 'minimex' is extended to all those whose income is less than a given amount. The allowance, however, is not linked to the occurrence of any of the contingencies covered by Regulation No 1408/71 and is granted to any claimant who has reached the age of majority and has less than the prescribed income. For that last reason the benefit constitutes social assistance.
- 8 The Commission maintains in the first place that within the scope of the rules on the freedom of movement for persons, the principle of equal treatment flatly prohibits the additional residence requirement which is not imposed on Belgian nationals. Even if that condition were extended to Belgian nationals, it would still constitute indirect discrimination because it would be harder to satisfy for nationals of other Member States. Secondly, it considers that the Belgian provisions in question differ from the schemes which the Court has had to consider in the past with a view to their classification in the branches of social security listed in Article 4 (1) of Regulation No 1408/71. The minimum means of subsistence does not cover any specific risk, its purpose being to guarantee the least well-off a minimum means of subsistence; it therefore falls squarely within the category of social advantages referred to in Article 7 of Regulation No 1612/68. Such social advantages must not be interpreted restrictively and must be taken to include all advantages, whether or not linked to a contract of employment, as is clear in particular from the Court's Judgment of 14 January 1982 (Case 65/81 *Reina v Landeskreditbank Baden-Württemberg* [1982] ECR 33).

Question (1)

- 9 Question (1) essentially asks whether a social benefit guaranteeing a minimum means of subsistence in a general manner such as that provided for by the Belgian

Law of 7 August 1974 falls within the material scope of Regulation No 1408/71 as defined by Article 4 (1) and (2) of the regulation.

- 10 Under Article 4 (1) of Regulation No 1408/71, the regulation is to apply to all legislation of the Member States concerning the branches of social security listed in Article 4 (1) (a) to (h), whereas Article 4 (4) states that the regulation is not to apply, *inter alia*, to 'social and medical assistance'.
- 11 The Court has stated in a number of decisions that the distinction between benefits which are excluded from the scope of Regulation No 1408/71 and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purpose and the conditions for its grant, and not on whether the national legislation describes the benefit as a social security benefit or not.
- 12 Although it is possible that because of the classes of persons to which they apply, their objectives and the detailed rules for their application, certain laws may simultaneously contain elements belonging to both the categories mentioned and thus defy any general classification, it must be stated that in order to fall within the field of social security covered by Regulation No 1408/71, the legislation at issue must in any event satisfy, in particular, the condition of covering one of the risks specified in Article 4 (1) of the regulation. It follows that the list of risks contained in that paragraph is exhaustive and that as a result a branch of social security not mentioned in the list does not fall within that category even if it confers upon individuals a legally defined position entitling them to benefits.
- 13 As is clear from documents before the Court, the 'minimex' is characterized on the one hand by the fact that it confers upon recipients a legally defined position and, on the other, by the fact that it is granted to any person who does not have adequate means and is unable to 'obtain them either by his own efforts or in any other way' (Article 1 (1) of the Law of 7 August 1974); it thus adopts need as an essential criterion for its application and does not make any stipulations as to periods of work, contribution or affiliation to any particular social security body covering a specific risk. A claimant need only show that 'he is prepared to accept

work' unless prevented by his state of health or compelling social reasons; furthermore, he is required to exercise his rights to social benefits or even any rights to maintenance if the public social welfare centre considers it necessary (Article 6 (1) and (2) of the 1974 Law).

14 It follows that an allowance like the one at issue, being a general social benefit, cannot be classified under one of the branches of social security listed in Article 4 (1) of Regulation No 1408/71 and therefore does not constitute a social security benefit within the specific meaning of the regulation.

15 It must therefore be stated in answer to Question (1) that a social benefit guaranteeing a minimum means of subsistence in a general manner such as that provided for by the Belgian Law of 7 August 1974 does not fall within the material scope of Regulation No 1408/71 of the Council of 14 June 1971, as defined by Article 4 (1) and (2) of that regulation.

Question (2)

16 In so far as Question (2) concerns the problem whether the requirement that a claimant must have actually resided within the territory of a Member State for a prescribed period in order to be entitled to a social benefit guaranteeing a minimum means of subsistence in a general manner is incompatible, inasmuch as it is not imposed on nationals of that Member State, with Regulation No 1408/71 and more specifically with Article 3 (1) of the regulation, a reply is no longer necessary. In so far as it relates to the compatibility of that requirement with the EEC Treaty, Question (2) should be examined together with Question (3).

Question (3)

17 Question (3) essentially asks whether a social benefit guaranteeing a minimum means of subsistence in a general manner, such as that provided for by the Belgian Law of 7 August 1974, constitutes a social advantage within the meaning of Regulation No 1612/68 of the Council of 15 October 1968. It is appropriate to examine at the same time the second limb of Question (2), namely whether the grant of the minimum means of subsistence may be made subject to the requirement that the

claimant should have actually resided within the territory of a Member State for a prescribed period where that requirement is not imposed on nationals of that Member State.

18 In order to answer Question (3), it should first be established whether a social benefit of a general nature may be regarded as a social advantage within the meaning of Regulation No 1612/68.

19 Paragraphs (1) and (2) of Article 7 of that regulation read as follows:

‘(1) A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.

(2) He shall enjoy the same social and tax advantages as national workers.’

20 As the Court has stated in a number of decisions, it follows from that regulation as a whole and from the objective pursued that the advantages which that regulation extends to workers who are nationals of other Member States are all those which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community.

21 For instance, the Court adopted that reasoning in its judgment of 12 July 1984 (Case 261/83 *Castelli v ONPTS* [1984] ECR 3199), in which it held that the concept of social advantages within the meaning of Article 7 (2) of Regulation No 1612/68 includes the grant of the income guaranteed to old people by the legislation of a Member State to a worker’s dependent relatives in the ascending line.

- 22 It follows from all the foregoing considerations that a benefit guaranteeing a minimum means of subsistence constitutes a social advantage, within the meaning of Regulation No 1612/68 of the Council, which may not be denied to a migrant worker who is a national of another Member State and is resident within the territory of the State paying the benefit, nor to his family.
- 23 As regards the question whether such a social advantage may be made subject to a residence requirement imposed exclusively on nationals of other Community countries, it should be borne in mind that, as the Commission rightly points out, the principle of non-discrimination is the fundamental principle in the context of the rules on freedom of movement, and is in fact referred to in Regulation No 1612/68. It is enunciated in Article 48 (2) of the EEC Treaty, in the fifth and sixth recitals of the preamble to Regulation No 1612/68 and, in particular, in Article 7 (2) of that regulation, which provides that a worker who is a national of a Member State is to enjoy, in the territory of another Member State, 'the same social and tax advantages as national workers'.
- 24 The residence requirement is an additional condition imposed on workers who are nationals of a Member State but not national workers. It therefore constitutes a clear case of discrimination on the basis of the nationality of workers.
- 25 Consequently it must be stated in answer to Question (3) that a social benefit guaranteeing a minimum means of subsistence in a general manner, such as that provided for by the Belgian Law of 7 August 1974, constitutes a social advantage within the meaning of Regulation No 1612/68 of the Council of 15 October 1968. Article 7 (2) of that regulation must be interpreted as meaning that the grant of such a social advantage may not be made subject to the requirement that the claimant should have actually resided within the territory of a Member State for a prescribed period where that requirement is not imposed on nationals of that Member State.

Question (4)

- 26 Question (4), which was merely put as an alternative question in the event of the answer to Question (2) being in the negative, does not now call for a reply.

Costs

- 27 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the questions submitted to it by the Arbeidsrechtbank, Antwerp, by judgment of 28 October 1983, hereby rules:

- (1) A social benefit guaranteeing a minimum means of subsistence in a general manner, such as that provided for by the Belgian Law of 7 August 1974, does not fall within the material scope of Regulation (EEC) No 1408/71 of the Council of 14 June 1971, as defined by Article 4 (1) and (2) of that regulation.
- (2) A social benefit guaranteeing a minimum means of subsistence in a general manner, such as that provided for by the Belgian Law of 7 August 1974, constitutes a social advantage within the meaning of Regulation (EEC) No 1612/68 of the Council of 15 October 1968. Article 7 (2) of that regulation must be interpreted as meaning that the grant of such a social advantage may not be made subject to the requirement that the claimant should have actually resided within the territory of a Member State for a prescribed period, where that requirement is not imposed on nationals of that Member State.

Due

Pescatore

Bahlmann

Delivered in open court in Luxembourg on 27 March 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber