



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

7 April 2016*

(Reference for a preliminary ruling — Article 45 TFEU and Article 48 TFEU — Charter of Fundamental Rights of the European Union — Article 15(2) — Regulation (EEC) No 1408/71 — Article 67(3) — Social security — Unemployment benefit to supplement income from part-time employment — Award of that benefit — Completion of periods of employment — Aggregation of periods of insurance or employment — Taking into account of periods of insurance or employment completed under the legislation of another Member State)

In Case C-284/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour du travail de Brussels (Belgium), made by decision of 27 May 2015, received at the Court on 10 June 2015, in the proceedings

Office national de l'emploi (ONEm)

v

M.

and

M.

v

Office national de l'emploi (ONEm),

Caisse auxiliaire de paiement des allocations de chômage (CAPAC),

THE COURT (Sixth Chamber),

composed of A. Arabadjiev, President of the Chamber, S. Rodin (Rapporteur) and E. Regan, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: French.

after considering the observations submitted on behalf of:

- the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents,
- the Danish Government, by C. Thorning and S. Wolff, acting as Agents,
- the Council of the European Union, by O. Segnana and A. Norberg, acting as Agents,
- the European Commission, by D. Martin, acting as Agent,

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

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 67(3) 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 592/2008 of 17 June 2008 (OJ 2008 L 177, p. 1, 'Regulation No 1408/71'), and the validity of that provision in the light of Article 45 TFEU, Article 48 TFEU and Article 15(2) of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in two joined sets of proceedings before the referring court between the Office national de l'emploi (ONem) ('ONem') and Mr M., and between Mr M., on the one hand, and ONem and the Caisse auxiliaire de paiement des allocations de chômage (CAPAC), on the other, concerning the payment of unemployment benefit and income guarantee benefit.

Legal context

EU law

- 3 Article 3 of Regulation No 1408/71, entitled 'Equality of treatment', provides, in paragraph 1 thereof:

'Subject to the special provisions of this Regulation, persons to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of the State.'
- 4 Article 67 of that regulation, entitled 'Aggregation of periods of insurance or employment', is worded as follows:

'1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of insurance shall take into account, to the extent necessary, periods of insurance or employment completed as an employed person under the legislation of any other Member State, as though they were periods of insurance completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as periods of insurance had they been completed under that legislation.'

2. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of employment shall take into account, to the extent necessary, periods of insurance or employment completed as an employed person under the legislation of any other Member State, as though they were periods of employment completed under the legislation which it administers.

3. Except in the cases referred to in Article 71(1)(a)(ii) and (b)(ii), application of the provisions of paragraphs 1 and 2 shall be subject to the condition that the person concerned should have completed lastly:

- in the case of paragraph 1, periods of insurance,
- in the case of paragraph 2, periods of employment,

in accordance with the provisions of the legislation under which the benefits are claimed.

4. Where the length of the period during which benefits may be granted depends on the length of periods of insurance or employment, the provisions of paragraph 1 or 2 shall apply, as appropriate.'

Belgian law

- 5 Article 29(2) of the Royal Decree of 25 November 1991 on unemployment (arrêté royal du 25 novembre 1991 portant réglementation du chômage; *Moniteur belge*, 31 December 1991, p. 29888), in the version applicable at the material time ('the Royal Decree of 25 November 1991'), is worded as follows:

'A worker who has entered into a work arrangement which does not correspond to the provisions of Article 28(1) or (3) and whose weekly duration complies with the provisions of Article 11a(4) et seq. of the Law of 3 July 1978 on employment contracts shall be considered to be a part-time worker with retained rights from the commencement of his part-time employment if:

- 1
- (a) all the necessary conditions to qualify for benefit as a full-time worker are met when he enters into the part-time work arrangement ...

...'

- 6 Under Belgian law, the grant of unemployment benefit as a full-time worker is subject to certain conditions, including — pursuant to Article 30 of the Royal Decree of 25 November 1991 — the requirement to have worked a certain number of days in the course of a reference period preceding the application for benefit.

- 7 Article 37(2) of the Royal Decree of 25 November 1991 provides that:

'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.'

- 8 Under Article 131a(1) of the Royal Decree of 25 November 1991, part-time workers with retained rights may, for the duration of their part-time employment, receive an 'income guarantee benefit' provided that they meet certain requirements.

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

- 9 Mr M., a musician of Czech nationality, was employed until 27 April 2008 in the Czech Republic under a full-time employment contract. After moving to Belgium, he registered as a job-seeker in that Member State on 10 May 2008.
- 10 On 27 May 2008, Mr M. applied for unemployment benefit with effect from 13 May 2008, but no response was given to that application.
- 11 On 9 September 2008, after being hired under a part-time employment contract for 2.5 hours per week, as a violin and guitar teacher, Mr M. applied for income guarantee benefit with effect from 8 September 2008 in respect of the hours in which he was not employed.
- 12 On the day after his part-time contract came to an end, namely 24 June 2009, Mr M., having no employment, submitted an application for unemployment benefit with effect from that date. Subsequently, on 22 October 2009, having again been hired under a part-time contract, Mr M. submitted a second application for income guarantee benefit with effect from 7 September 2009.
- 13 ONeM took the following decisions on Mr M.'s various applications:
 - on 3 July 2009 and then on 22 July 2009, ONeM rejected the application for income guarantee benefit for the period beginning 8 September 2008 on the ground that the work carried out in the Czech Republic could not be taken into account because it had not been followed by work carried out in Belgium;
 - on 26 August 2009, ONeM rejected the application for unemployment benefit for the period beginning 24 June 2009, on the ground that, in order to be entitled to unemployment benefit as a part-time worker having ceased all activity, the person concerned must have worked for 12 or more hours per week in the posts previously held;
 - the application for income guarantee benefit for the period beginning 7 September 2009 was rejected.
- 14 Mr M. challenged all of those decisions before the Tribunal du travail de Bruxelles (Labour Court, Brussels). By judgment of 11 September 2012, that court declared Mr M.'s action to be partially well founded.
- 15 On 16 and 18 October 2012, respectively, ONeM and Mr M. appealed against that judgment before the cour du travail de Bruxelles (Higher Labour Court, Brussels).
- 16 By decision of 24 December 2014, that court confirmed that Mr M. was entitled to full-time unemployment benefit for the period from 24 June to 6 September 2009, and to income guarantee benefit with effect from 7 September 2009. With regard to the grant of unemployment benefit as from 8 September 2008, that court ordered that the proceedings be reopened in order to allow the parties to the main proceedings to submit their observations on the application of Article 67(3) of Regulation No 1408/71. A hearing was held for that purpose on 29 April 2015.
- 17 The referring court notes that the only point at issue before it is whether Mr M. could have been eligible for unemployment benefit as a full-time worker on 8 September 2008.
- 18 In that respect, it observes that the income guarantee benefit is granted only to part-time workers with retained rights. In order to have the status of a part-time worker with retained rights, a worker such as Mr M. must be able to show that, at the date of the commencement of his part-time activity, he could meet all the requirements to qualify for unemployment benefit as a full-time worker.

- 19 In the referring court's view, it appears that Mr M. did not meet all those requirements, since, in the first place, the work carried out in the Czech Republic could not be taken into account and, in the second place, on 8 September 2008 he had not yet completed the periods of work as an employed person under Belgian legislation.
- 20 Nevertheless, that court expresses doubts as to the validity of Article 67(3) of Regulation No 1408/71 on the ground that it could be regarded as an unjustified obstacle to the free movement of nationals of other Member States who intend to take up part-time employment in Belgium.
- 21 It observes, in that respect, that the present case appears to be different from the case that gave rise to the judgment in *van Noorden* (C-272/90, EU:C:1991:219) — in which the Court of Justice held that Article 67(3) of Regulation No 1408/71 does not preclude a Member State from refusing to grant a worker unemployment benefit when the worker has not completed, lastly, periods of insurance or employment in that Member State — since the applicant in the main proceedings in that case had not indicated his intention to take up part-time employment.
- 22 In those circumstances, the *cour du travail de Bruxelles* (Higher Labour Court, Brussels) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Is Article 67(3) of Regulation No 1408/71 to be interpreted as precluding a Member State from refusing to aggregate periods of employment necessary to qualify for unemployment benefit to supplement income from part-time employment, where that employment was not preceded by any period of insurance or of employment in that Member State?
- (2) If the first question is to be answered in the negative, is Article 67(3) of Regulation No 1408/71 compatible with, in particular:
- Article 48 TFEU, in so far as the condition to which Article 67(3) makes the aggregation of periods of employment subject is likely to restrict the freedom of movement of workers and their access to certain part-time employment,
 - Article 45 TFEU, which entails “the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment” and provides for the right for workers “to accept offers of employment actually made” (including part-time employment) in other Member States, ‘to move freely within the territory of Member States for this purpose’ and to stay there “for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action”,
 - Article 15(2) of the [Charter], which states that “every citizen of the Union has the freedom to seek employment, to work, ... in any Member State”?

Consideration of the questions referred

The first question

- 23 It must be recalled, first, that it can be seen from the order for reference that an applicant for unemployment benefit to supplement income from part-time employment, namely the income guarantee benefit provided for under Belgian law, must meet the requirements to qualify for unemployment benefit as a full-time worker.

- 24 Secondly, it is apparent from the written observations of the Belgian Government that the income guarantee benefit was established in order to avoid a situation in which persons who are eligible for unemployment benefit as full-time workers are dissuaded from accepting part-time employment because the amount of that benefit is greater than the salary paid for that part-time employment.
- 25 Consequently, since a person who does not meet the eligibility requirements for unemployment benefit is also ineligible for income guarantee benefit, it must be examined whether Article 67(3) of Regulation No 1408/71, which is applicable *ratione temporis* to the facts in the main proceedings, precludes a Member State from not aggregating the periods of employment which constitute an eligibility requirement for that benefit, where no period of employment or insurance has been completed in the Member State in which an application for unemployment benefit is made.
- 26 In that respect, it must be recalled that it is settled case-law that a person seeking employment who has never been subject to the social security legislation of the Member State in which he claims unemployment benefits and thus has not completed, lastly, periods of insurance or of employment in accordance with the provisions of the legislation of that Member State cannot be entitled to unemployment benefits under Article 67 of Regulation No 1408/71 (see judgments in *van Noorden*, C-272/90, EU:C:1991:219, paragraph 10; *Martínez Losada and Others*, C-88/95, C-102/95 and C-103/95, EU:C:1997:69, paragraph 36; and the order in *Verwayen-Boelen*, C-175/00, EU:C:2002:133, paragraph 26).
- 27 Moreover, the European Commission's argument that it must be verified, in the present case, whether the Belgian legislation in relation to the income guarantee benefit could lead to indirect discrimination, prohibited by Article 3(1) of that regulation, cannot be accepted.
- 28 It is clear from the Court's case-law that, in the context of Regulation No 1408/71, the taking into account by a Member State of periods of employment or insurance completed by the persons concerned under the legislation of another Member State for the purposes of the award of unemployment benefit is governed solely by Article 67 of that regulation (see judgment in *Martínez Losada and Others*, C-88/95, C-102/95 and C-103/95, EU:C:1997:69, paragraph 27; and order in *Verwayen-Boelen*, C-175/00, EU:C:2002:133, paragraph 24 and the case-law cited). Accordingly, Article 3 of that regulation is not applicable where the same regulation contains specific provisions such as Article 67, which governs the entitlement of unemployed persons to unemployment benefits (see, to that effect, judgment in *Adanez-Vega*, C-372/02, EU:C:2004:705, paragraph 57).
- 29 In those circumstances, it follows from all of the foregoing considerations that Article 67(3) of Regulation No 1408/71 must be interpreted as not precluding a Member State from refusing to aggregate periods of employment necessary to qualify for unemployment benefit to supplement income from part-time employment, where that employment was not preceded by any period of insurance or of employment in that Member State.

The second question

- 30 By its second question, the referring court asks, in essence, whether Article 67(3) of Regulation No 1408/71 is valid in view of Article 45 TFEU, Article 48 TFEU and Article 15(2) of the Charter.
- 31 In that respect, it must be recalled, in the first place, that Article 48 TFEU does not prohibit the EU legislature from attaching conditions to the rights and advantages which it accords in order to ensure the freedom of movement for workers enshrined in Article 45 TFEU or from determining the limits thereto and, in the second place, that the Council of the European Union made proper use of its discretion in attaching such conditions, inter alia, to Article 67(3) of Regulation No 1408/71, which is designed to encourage unemployed persons to seek work in the Member State where they last paid

unemployment insurance contributions, and to make that State bear the burden of providing the unemployment benefits (see, to that effect, judgment in *Gray*, C-62/91, EU:C:1992:177, paragraphs 11 and 12).

- 32 Consequently, it must be held that the examination of the second question has disclosed no factor of such a kind as to affect the validity of Article 67(3) of Regulation No 1408/71 in view of Article 45 TFEU and Article 48 TFEU.
- 33 As to whether Article 67(3) of Regulation No 1408/71 complies with Article 15(2) of the Charter, it must be borne in mind that Article 52(2) of the Charter provides that rights recognised by the Charter for which provision is made in the treaties are to be exercised under the conditions and within the limits defined in the treaties. In that vein, Article 15(2) of the Charter reiterates inter alia the free movement of workers guaranteed by Article 45 TFEU, as the explanations relating to that provision confirm (OJ 2007, C 303, p. 17) (see judgment in *Gardella*, C-233/12, EU:C:2013:449, paragraph 39).
- 34 It follows that, since Article 67(3) of Regulation No 1408/71 complies with Article 45 TFEU and Article 48 TFEU, it also complies with Article 15(2) of the Charter.
- 35 It follows from all of the above that consideration of the second question has not disclosed any factor of such a kind as to affect the validity of Article 67(3) of Regulation No 1408/71.

Costs

- 36 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 (Sixth Chamber) hereby rules:

- 1. Article 67(3) 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 592/2008 of 17 June 2008, must be interpreted as not precluding a Member State from refusing to aggregate periods of employment necessary to qualify for unemployment benefit to supplement income from part-time employment, where that employment was not preceded by any period of insurance or of employment in that Member State.**
- 2. Consideration of the second question has not disclosed any factor of such a kind as to affect the validity of Article 67(3) of Regulation No 1408/71, in the version amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008.**

[Signatures]