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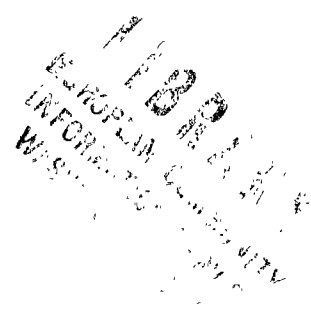
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Report

drawn up on behalf of the Committee on the Rules of Procedure and Petitions

on Petition No 1/79 concerning the non-uniform interpretation by the Member States of Regulation (EEC) No 1408/71

Rapporteur: Mr F. D'ANGELOSANTE



By letter of 9 April 1979 the President of the European Parliament referred Petition No. 1/79 by Miss Haschek to the Committee on the Rules of Procedure and Petitions, pursuant to Rule 48(3) of the Rules of Procedure.

At its meeting of 16 May 1979 the Committee on the Rules of Procedure and Petitions declared the petition admissible, pursuant to Rule 48(3) of the Rules of Procedure, and decided to ask the Committee on Social Affairs and Employment for its opinion. At its meeting of 30 October 1979 the committee appointed Mr D'Angelosante rapporteur.

At its meeting of 23 and 24 June 1980 the committee decided to draw up a report and adopted it unanimously.

Present: Mr Nyborg, chairman; Mr Berkhouwer, Mrs Boot, Mr Chambeiron, Mr Patterson, Mr Price and Mr Sieglerschmidt.

The opinion of the Committee on Social Affairs and Employment is attached.

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The Committee on the Rules of Procedure and Petitions hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

concerning the non-uniform interpretation by the Member States of Regulation (EEC) No. 1408/71

The European Parliament,

- having regard to Petition No. 1/79,
 - having regard to the report of the Committee on the Rules of Procedure and Petitions and the opinion of the Committee on Social Affairs and Employment (Doc. 1-286/80),
1. Notes that Petition No. 1/79 states that the competent authorities of the various Member States are interpreting Community legislation in differing ways;
 2. Points out that, under Article 69(1)(c) of Regulation No. 1408/71, a worker who is wholly unemployed, who is entitled to the relevant benefits in one Member State and who goes to another Member State to seek employment there, retains his entitlement to such benefits for a maximum period of three months from the date when he ceased to be available to the employment services of the Member State he has left;
 3. Recalls that, in accordance with the case-law of the Court of Justice of the European Communities, Article 51 of the EEC Treaty, upon which Regulation No. 1408/71 is based, is closely connected with Articles 48 and 49 of the Treaty which provide for the free movement of workers;
 4. Stresses the importance of a consistent application of Community legislation in the Member States since the purposes of this legislation may be frustrated by divergent interpretations and decisions which do not take sufficient account of the aims in view;
 5. Points out that, according to Petition No. 1/79, the Paris labour exchange interpreted Article 69(1)(b) to mean that the petitioner had lost her entitlement to unemployment benefit, whilst under this provision a delay in registering at the labour exchange of the Member State to which the worker has gone results merely in a loss of entitlement to benefit between the date of departure from the first Member State and the date of registering with the employment services of the Member State to which the worker has gone;

6. Calls on the Commission of the European Communities, which, under Article 155 of the EEC Treaty, has to ensure the application of the provisions of the Treaty and the measures taken pursuant thereto, to make representations to the employment services of the Member States;
7. Expects the Commission to submit a report to Parliament on the results of its action.

EXPLANATORY STATEMENTI. SUBJECT OF THE PETITION

1. Petition No. 1/79 is concerned with the entitlement to unemployment benefit guaranteed at Community level by 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 Community¹. The petitioner complains of the failure in her case to apply the provisions which permit workers who are unemployed in one Member State to look for a job in another Member State. When she moved from the Federal Republic of Germany to France, the French authorities refused to pay her unemployment benefit in application of the provisions of Council Regulation No. 1408/71.

2. This refusal by the French authorities to apply the provisions of Regulation No. 1408/71 in the applicant's case is said to be due to the delay with which she reported to the competent labour exchange in Paris to register as unemployed. The petitioner gives two reasons for this delay: firstly the public holiday which fell on the date of her arrival in Paris (together with a bridging day to the weekend) and secondly the need to attend interviews with the employers who had replied to an advertisement which she had had published through the German-French Chamber of Industry and Commerce.

3. Leaving aside the adverse effects of a material nature (premature departure from Paris, giving notice of leaving her apartment, etc.), the petitioner complains that the competent authorities of the various Member States are giving differing interpretations to Community legislation since the labour exchange in Germany had given her assurances which were later not borne out by her treatment by the labour exchange in Paris.

II. THE PROVISIONS OF REGULATION No. 1408/71

4. The provisions of Regulation No. 1408/71 which are relevant to the petitioner's situation are contained in the section 'Unemployed persons going to a Member State other than the competent State' (Articles 69 and 70). In particular, pursuant to Article 69(1)(c), a wholly unemployed worker, who is entitled to the relevant benefits in one Member State and who goes to another Member State to seek employment there, retains his entitlement to such benefits for a maximum period of three months from the date when he ceased to be available to the employment services of the State which he left.

5. However, under Article 69(1)(b), the worker 'must register as a person seeking work with the employment services of each of the Member States to which he goes and be subject to the control procedure organized therein. This condition shall be considered satisfied for the period before

¹ OJ No. L 149, 5.7.1971, p. 2 ff.

registration if the person concerned registered within seven days of the date when he ceased to be available to the employment services of the State he left. In exceptional cases, this period may be extended by the competent services or institutions.'

6. Accordingly, for the period prior to registration in the Member State to which he goes, the worker's benefits will be uninterrupted provided he registers within seven days of the date when he is no longer available to the labour exchange in the Member State from which he has come. Should the period of seven days be exceeded, this does not mean the loss of entitlement to subsequent benefits but only the loss of benefit for the period between the date of departure from the original Member State and the date of registration at the labour exchange in the Member State to which the worker has gone.

7. Since the petitioner ceased to be available to the Flensburg labour exchange as from 1 May 1978, she should have registered at the labour exchange in Paris no later than 8 May 1978. She did not do this because she arrived in Paris on a public holiday (in 1978, Thursday, 4 May, was Ascension Day) and she could not do it on the following day because of the 'bridge' linking it to the weekend. Whilst it is true that the final deadline for registration at the Paris labour exchange was only the following Monday, 8 May, it is reasonable to ask whether the need to reply to the job offers which she had received in the meantime in answer to her advertisement should not be considered to have precedence over the formality of registering at a labour exchange.

8. The question thus has to be looked at from these two viewpoints: the expiry of the time limit and the reasons for the delay in registering at the Paris labour exchange.

III. THE TIME LIMIT

9. The rules applicable to periods, dates and time limits which figure in Community acts are laid down in Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971¹. Article 2(2) of this regulation states:

'2. For the purposes of this Regulation, 'working days' means all days other than public holidays, Sundays and Saturdays.'

10. The time limit mentioned in Article 69(1)(b) of Regulation No. 1408/71 which is expressed in days, is covered by the provisions of the second paragraph of Article 3(2) of the abovementioned Regulation No. 1182/71 under which:

¹ OJ No. L 124, 8.6.1971, p. 1

'Where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be considered as falling within the period in question.'

11. Since the petitioner ceased to be available to the German labour exchange as from 1 May 1978, this day (which, moreover, was a public holiday) should not be included within the prescribed time limit. The period therefore began on 2 May. Since, under Article 3(3) of the above-mentioned Regulation No. 1182/71, 'the periods concerned shall include public holidays, Sundays and Saturdays, save where these are expressly excepted or where the periods are expressed in working days', the petitioner should in fact have registered at the Paris labour exchange by 3 May 1978. One should nevertheless bear in mind that, according to the information given by the German labour exchange (and subsequently confirmed), a delay in registration would have meant only the loss of entitlement to unemployment benefit for the days for which she was without cover.

IV. THE REASONS FOR THE DELAY

12. The purpose of Article 69 of Regulation No. 1408/71 is to ensure that unemployed workers receive for a limited period of time the unemployment benefits granted under the legislation of the Member State to whose provisions they have most recently been subject, while at the same time creating more favourable conditions for the mobility of the labour force. Article 51 of the EEC Treaty, on which Regulation No. 1408/71 is based, lays down that the Council, acting on a proposal from the Commission, shall 'adopt such measures in the field of social security as are necessary to provide freedom of movement for workers'. The content and limits of the obligation incumbent upon the Council under the authority conferred by Article 51 are not only governed by that article but they also result above all from Articles 48 and 49 of the EEC Treaty, which are closely connected with it as regards subject matter¹.

13. The freedom of movement for workers granted by Article 48 of the EEC Treaty entails the right, subject to limitations justified on grounds of public policy, public security or public health, for workers 'to accept offers of employment actually made'. Now, since the petitioner arrived in Paris during a holiday period and was consequently unable to present herself at the labour exchange to register as unemployed, the formality required by Article 69(1)(b) could not have the same urgency for her, at least subjectively speaking, as interviews with employers who had indicated that they might be willing to offer her a job. Indeed, the petitioner would not have changed her unemployed status if she had gone to the Paris labour exchange, but, by contacting potential employers in good time, she might have very well been able to change it.

¹ See the conclusions of the advocate general in Case 139/78 of 25.2.1979, provisional edition, p. 6

14. The petitioner fulfilled her obligation to register on 11 May 1978 or the third day following the expiry of the time limit, promising to submit the E 303 form as soon as she received it from the employment services of her country of origin. The form reached her only at the end of May and the date of posting (23 May 1978) certainly does not suggest any sense of urgency on the part of the German labour exchange. It must be borne in mind that in the meantime the party concerned had found herself accommodation and had assumed the relevant financial commitments. The Paris labour exchange, giving a different interpretation to the Community provisions from that of the Flensburg labour exchange, decided that the petitioner had lost her entitlement to unemployment benefit since she had not registered within the indicated time limit of 8 May 1978.

In actual fact, under Article 69(1)(b), she had lost her entitlement to benefit for the ten previous days or the seven days of the prescribed time limit plus the three days before she registered.

V. CONCLUSIONS

15. Petition No. 1/79 demonstrates the importance of a consistent application of Community rules since their purpose can be frustrated if divergent interpretations are made by the competent authorities of the Member States or if decisions are taken which do not take due account of the aims pursued.

16. In particular, Article 69(1)(b) of Regulation No. 1408/71 lays down a time limit of seven days within which a worker from one Member State must register with the employment services of another Member State to which he has gone to look for a job. Having done this he may continue to receive for a period of three months the social security benefits which are granted to him in the Member State from which he has come. This provision was interpreted by the Paris labour exchange to mean that the expiry of the seven days' time limit would entail the forfeiture of his entitlement to benefit. This interpretation, while not only not corresponding with the information given to the petitioner by the German employment services, also conflicts with the provision of Article 69(1)(b) under which the entitlement to benefit is lost only for the days prior to registration once the prescribed time limit has been exceeded.

17. Under Article 177 of the EEC Treaty the Court of Justice has jurisdiction to give preliminary rulings concerning the validity and interpretation of acts of the institutions of the Community. The Court of Justice would therefore have been able to give a ruling on the case described in the petition if the interpretation given by the Paris labour exchange had been contested before a French judge. It is however still possible to make a complaint to the Commission which, under Article 155 of the Treaty, is required to ensure the application of the provisions of the Treaty and the measures taken by the institutions pursuant thereto.

OPINION OF THE COMMITTEE ON SOCIAL AFFAIRS AND EMPLOYMENT

Letter from the chairman of the committee to Mr K. NYBORG,
Chairman of the Committee on the Rules of Procedure and
Petitions

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The Committee on Social Affairs and Employment considered the above petitions at its meeting of 23 April 1980.

As regards these and similar, often quite harrowing cases, involving the local implementation of Community or national social security provisions, about which it receives numerous letters, the committee wishes to make the following points clear:

- the European Parliament has no funds at its disposal to help persons whose petition is not covered by standard social security arrangements;
- the Commission of the European Communities has no such funds either;
- the European Parliament is not in a position to provide any kind of legal aid in such cases.

The Committee on Social Affairs and Employment therefore concludes that both of these cases should be immediately referred to the relevant department of the Commission of the European Communities, and that at the same time an effort should be made, together with the Commission, to devise special cooperation arrangements to eliminate arbitrary methods of resolving such cases; in other words, an office on the lines of a Community Ombudsman should be established.

It should also be noted that this kind of problem is encountered not only by migrant workers, but also by workers living in frontier areas.

The appointment of a Community Ombudsman would also enhance the Community's public image.

Yours sincerely,

PETITION No. 1/79
by Miss Eva Haschek

Subject: Non-uniform interpretation by the Member States of EEC
Regulation 1403/71

The European Parliament is very much in the news these days, but fervent European though I am, or at least should like to be, I wonder whether the decisions, agreements, etc. adopted by the EC actually reach those responsible for implementing them or whether they remain stuck somewhere in between, since, because of lack of information, they are interpreted wrongly and diversely.

Here is an example on which I should like to hear your views: from 1 January to 1 May 1978 I was out of work in the Federal Republic of Germany and was entitled to receive unemployment benefit. On 1 May 1978, I left Westerland on the island of Sylt, where I was registered as unemployed, to look for work in Paris. The Flensburg labour exchange promised to issue me an E 303 certificate and send it to me in Paris. This certificate would enable me to register as unemployed in any Member State of the EC and entitle me to uninterrupted payment of unemployment benefit for a period of three months from the date of my departure from Germany. This is all clearly explained in explanatory notice E 303 - 1.77 (see Annex I).

According to the E 303 form, I should have registered with the Paris labour exchange not later than 8 May 1978. However, I did not receive the certificate until the end of May since it was only sent off from Flensburg on 23 May 1978. At the same time, I was unable to register with the Paris labour exchange in good time for the following reasons:

Firstly, I left Germany somewhat later than planned because I stopped off in Stuttgart to visit my parents. I arrived in Paris on a holiday (Thursday), and since the Friday was a bridging day, there was nothing which could be done that week. Secondly, I had put an advertisement in the advertising journal of the German-French Chamber of Industry and Commerce to which I received numerous replies, and I spent the whole of the following week attending interviews.

Since I was not able to find a suitable job, however, I registered as unemployed on 11 May and had to promise to submit the E 303 form as soon as I received it.

According to the E 303 explanatory notice, I should have been entitled to draw unemployment benefit from the day of my registration. My delay in

registering had merely deprived me of the right to uninterrupted payment, which meant that I had lost a week's unemployment benefit.

This was subsequently confirmed to me by the Flensburg and Pforzheim labour exchanges. However:

The Paris labour exchange and the Assedic Paris claim that I have lost my entitlement to payment altogether because I did not register within the proper time-limit.

To this day I have been unable to obtain recognition of my rights.

I was obliged to leave Paris prematurely since my money had run out. I had to give up the flat which I had only just moved into, which involved me a great deal of unpleasantness regarding deposit payment, period of notice, etc.

Can you please explain to me how it is that Community decisions are interpreted differently from one Member State to the next?

Would you also please tell me where to apply to obtain recognition of my rights?

Luxembourg, 30 March 1979

Eva HASCHEK
Profession: Foreign language secretary
Nationality: German
Belzackerweg 10/2
D-713 Mühlacker

The documents accompanying the petition have been forwarded to the Committee on the Rules of Procedure and Petitions.

Text of Article 69 of Council Regulation (EEC) No. 1408/71 of 14 June 1971
(OJ No. L 149, 5.7.1971, p. 26)

Article 69

Conditions and limits for the retention of the right to benefits

1. A worker who is wholly unemployed and who satisfies the conditions of the legislation of a Member State for entitlement to benefits and who goes to one or more other Member States in order to seek employment there shall retain his entitlement to such benefits under the conditions and within the limits hereinafter indicated:

- (a) before his departure, he must have been registered with the employment services of the competent State as a person seeking work and must have remained available for at least four weeks after becoming unemployed. However, the competent services or institutions may authorize his departure before such time has expired;
- (b) he must register as a person seeking work with the employment services of each of the Member States to which he goes and be subject to the control procedure organized therein. This condition shall be considered satisfied for the period before registration if the person concerned registered within seven days of the date when he ceased to be available to the employment services of the State he left. In exceptional cases, this period may be extended by the competent services or institutions;
- (c) entitlement to benefits shall continue for a maximum period of three months from the date when the person concerned ceased to be available to the employment services of the State which he left, provided that the total duration of the benefits does not exceed the duration of the period of benefits he was entitled to under the legislation of that State. In the case of a seasonal worker such duration shall, moreover, be limited to the period remaining until the end of the season for which he was engaged.

2. If the person concerned returns to the competent State before the expiry of the period during which he is entitled to benefits under paragraph 1(c), he shall continue to be entitled to benefits under the legislation of that State; he shall lose all entitlement to benefits under the legislation of the competent State if he does not return there before the expiry of that period. In exceptional cases, this time limit may be extended by the competent services or institutions.

3. The provisions of paragraph 1 may be invoked only once between two periods of employment.

4. Where the competent State is Belgium, an unemployed person who returns there after the expiry of the three month period laid down in paragraph 1(c), shall not requalify for benefits in that country until he has been employed there for at least three months.

