

SUMMARY

ECJ 7 April 2016, case C-284/15 (ONEm), free movement – social insurance

<p>An EU citizen moving to another Member State, in order to qualify for unemployment benefits there, must meet the requirements for entitlement under the law of his new State of residence.</p>

Summary

An EU citizen moving to another Member State, in order to qualify for unemployment benefits there, must meet the requirements for entitlement under the law of his new State of residence.

Facts

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 there on 10 May 2008. He found several part-time jobs. He made applications for (i) unemployment benefit for the periods during which he had no work and (ii) income guarantee benefit for the periods during which he was only employed part-time. ONEm (a public social security institution that manages the system of unemployment insurance and some employment measures) rejected all of M.'s applications, some 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 and some 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. M challenged all of those decisions before the Labour Court in Brussels.

National proceedings

The Labour Court declared M.'s action to be partially well founded. Both parties appealed

before the Higher Labour Court of Brussels. That court referred questions to the ECJ (1) on the interpretation of Article 67(3) of Regulation 1408/71 and (2) on whether that provision is compatible with the rules on free movement and with Article 15(2) of the EU Charter of Fundamental Rights, which grants every EU citizen the right to seek employment in any Member State.

Article 67 of Regulation 1408/71 provides that: “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.

Paragraph 2 is largely identical. Paragraph 3, which is central to this case, provides that:

“[...] 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,

ECJ’s findings

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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 (§26).

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Article 3 of the Regulation provides that “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”, thus prohibiting discrimination on the basis of nationality. The Commission argues 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. That argument cannot be accepted. 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. 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 (§27-28).

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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. 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 (§31).

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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. 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 (§33-34).

Judgment

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Article 67(3) of Regulation (EEC) 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.

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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 [...].

Creator: European Court of Justice (ECJ)

Verdict at: 2016-04-07

Case number: C-284/15 (ONEm)