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TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
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DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
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TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
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EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

**PRESS RELEASE No 18/08**

1 April 2008

Judgment of the Court of Justice in Case C-212/06

*Government of the French Community, Walloon Government v Flemish Government*

**CERTAIN FEATURES OF THE FLEMISH CARE INSURANCE SCHEME ARE  
CONTRARY TO COMMUNITY LAW**

*Nationals of Member States other than Belgium, and Belgian nationals who have made use of the right to freedom of movement, residing in another part of national territory, may not be excluded from that scheme*

By decree of the Flemish Parliament of 30 March 1999 a care insurance scheme was set up in the Dutch-speaking region and in the bilingual region of Brussels-Capitale. This scheme confers entitlement, on certain conditions and up to a maximum amount, to have an insurance fund take responsibility for certain costs occasioned by a state of dependence for health reasons, such as expenses involved in home-help services or in the purchase of equipment or products needed by the insured person.

That decree has been amended on several occasions, in order in particular to take account of objections raised by the Commission of the European Communities. In essence, the latter challenged the compatibility with Community law of the condition of residence in those regions, to which affiliation to that care insurance scheme was made subject.

The criterion of residence was, therefore, adapted by the Decree of the Flemish Parliament of 30 April 2004. That decree chiefly extended the scope *ratione personae* of the care insurance scheme to persons working in the territory of those regions and residing in a Member State other than the Kingdom of Belgium.

Nevertheless, in their actions before the Cour d'arbitrage, now the Cour constitutionnelle, directed against the Flemish care insurance scheme, the Governments of two other entities of the Belgian federal State, namely, the Government of the French Community and the Walloon Government, claimed that to exclude from that scheme persons who, although working in the Dutch-speaking region or in the bilingual region of Brussels-Capitale, reside in another part of national territory, amounts to a restrictive measure hindering the free movement of persons. On this point the Cour d'arbitrage has referred several questions to the Court of Justice of the European Communities.

The Court replies by confirming, first of all, that benefits provided under a scheme such as the care insurance scheme at issue fall within the scope *ratione materiae* of Regulation No 1408/71<sup>1</sup>.

Next, **the Court distinguishes two kinds of situation.**

**On the one hand**, application of the legislation at issue leads, *inter alia*, to the exclusion from the care insurance scheme of Belgian nationals working in the territory of the Dutch-speaking region or in that of the bilingual region of Brussels-Capitale but who live in another part of national territory and who have never exercised their freedom to move within the European Community.

**Community law clearly cannot be applied to such purely internal situations.** It may nevertheless be remarked that interpretation of provisions of Community law might possibly be of use to the national court, having regard too to situations classed as purely internal, in particular if the law of the Member State concerned were to require every national of that State to be allowed to enjoy the same rights as those which a national of another Member State would derive from Community law in a situation considered to be comparable by that court.

**On the other hand**, the legislation at issue may also exclude from the care insurance scheme employed or self-employed workers falling within the ambit of Community law, that is to say, both nationals of Member States other than Belgium working in the Dutch-speaking region or in the bilingual region of Brussels-Capitale but who live in another part of the national territory, and Belgian nationals in the same situation who have made use of their right to freedom of movement.

**Legislation such as that at issue is such as to produce restrictive effects.** Migrant workers, pursuing or contemplating the pursuit of employment or self-employment in one of those two regions, might be dissuaded from making use of their freedom of movement and from leaving their Member State of origin to stay in Belgium, by reason of the fact that moving to certain parts of Belgium would cause them to lose the opportunity of eligibility for the benefits which they might otherwise have claimed. In other words, the fact that employed or self-employed workers find themselves in a situation in which they suffer either the loss of eligibility for care insurance or a limitation of the place to which they transfer their residence is, at the very least, capable of impeding the exercise of freedom of movement for workers and freedom of establishment.

National measures capable of hindering the exercise of fundamental freedoms guaranteed by the Treaty or of making it less attractive may be allowed only if they pursue a legitimate objective in the public interest, are appropriate to ensuring the attainment of that objective, and do not go beyond what is necessary to attain the objective pursued.

The Court finds, however, that there is nothing in either the file sent to the Court by the referring court or the observations of the Flemish Government capable of justifying the application, to persons working in the Dutch-speaking region or the bilingual region of Brussels-Capitale, of a requirement of residence either in one of those two regions or in another Member State, for the purpose of eligibility for the care insurance scheme.

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<sup>1</sup> 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1).

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: EN FR DE NL*

*The full text of the judgment may be found on the Court's internet site  
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-212/06>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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