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Judgment of the Court of Justice in Case C-406/04

Gérald De Cuyper v. Office national de l'emploi

**FREEDOM OF MOVEMENT AND RESIDENCE DOES NOT PRECLUDE A
RESIDENCE CLAUSE AS A CONDITION FOR THE RETENTION OF ENTITLEMENT
TO AN UNEMPLOYMENT ALLOWANCE.**

Such a clause reflects the need to monitor the circumstances of unemployed persons.

Mr De Cuyper, a Belgian national was granted unemployment allowances in 1997, having previously been employed in Belgium. In 1998 he was exempted from the control procedure imposed on unemployed persons. In 1999 he produced a declaration in which he stated that he was living in Belgium. In 2000 inspectors from the Office national de l'emploi (ONEM) investigated the accuracy of those declarations and Mr De Cuyper admitted that he had not actually lived in Belgium since January 1999, but was resident in France. On the basis of that investigation he was refused unemployment allowances because he no longer satisfied the requirement of actual residence prescribed under Belgian law. ONEM also demanded repayment of the allowances paid since January 1999, amounting to EUR 12 452.78.

Mr De Cuyper contested ONEM's decision before the Tribunal du travail de Bruxelles which made a reference for a preliminary ruling to the Court of Justice of the European Communities.

As regards the nature of the unemployment allowance, the Court holds that it is a social security benefit to which Regulation No 1408/71¹ applies; that is so even if, under a national provision, the recipient is exempt from registering as a job-seeker and consequently from the requirement of being available for work. In that regard, the Court states that the fact that the unemployed person has obtained that exemption does not mean that he is exempt from the requirement to remain

¹ 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), as amended by Council Regulation (EC) No 1606/98 of 29 June 1998 (OJ 1998 L 209, p. 1)

available to the employment services inasmuch as, even if he does not have to register as a job-seeker or accept any suitable employment, he must still remain available to those services so that they can monitor his employment and family situation.

Next, as regards the question whether a Member State is, under Community law, authorised to make entitlement to such an allowance conditional on residence in its territory, the Court observes that, even though the EC Treaty provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, that right of residence is not unconditional. It is conferred subject to the limitations and conditions laid down by the Treaty and by the measures adopted to give it effect.

In that regard, Regulation No 1408/71 provides for only two situations in which the competent Member State is required to allow recipients of an unemployment allowance to reside in the territory of another Member State while retaining their entitlement to it: where the unemployed person goes to another Member State 'in order to seek employment there' or where the unemployed person was residing in the territory of another Member State during his last employment. It is clear from the documents before the Court that Mr De Cuyper's position is not covered by either of those situations.

The Court accepts that national legislation which places at a disadvantage certain of its nationals simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred on every citizen of the Union. However, in this case, the enactment of a residence clause reflects the need to monitor the employment and family situation of unemployed persons. That clause allows ONEM inspectors to check whether the situation of a recipient of the unemployment allowance has undergone changes which may have an effect on the benefit granted. That justification is accordingly based on objective considerations of public interest independent of the nationality of the persons concerned. The monitoring to be carried out as far as concerns the unemployment allowance is thus of a specific nature which justifies the introduction of arrangements that are more restrictive than those for monitoring in respect of other benefits.

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Languages available: FR, EN, DE, NL, PL, SL, ES, IT, HU, CS, SK, GR

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-406/04>

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

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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